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TITLE 7—AGRICULTURE

Chapter I—Production and Marketing Administration (Standards, Inspections, Marketing Practices)

Subchapter C—Regulations Under the Farm Products Inspection Act

PART 55—SAMPLING, GRADING, GRADE LABELING, AND SUPERVISION OF PACKAGING OF BUTTER, CHEESE, EGGS, POULTRY, AND DRESSED DOMESTIC RABBITS

FORMS AND INSTRUCTIONS

On March 23, 1948, notice of proposed rule making was published in the FEDERAL REGISTER (13 F. R. 1508) proposing instructions governing plants operating as official plants processing and packaging dairy products, pursuant to the revised rules and regulations governing the sampling, grading, grade labeling, and supervision of packaging of butter, cheese, eggs, poultry, and dressed domestic rabbits (7 CFR, 1946 Supp., Part 55). After consideration of all relevant matters presented, including the proposals set forth in the aforesaid notice, the following instructions and requirements are hereby promulgated pursuant to the provisions of the Department of Agriculture Appropriation Act, 1949 (Pub. Law 712, 80th Cong., 2d Sess., approved June 19, 1948):

§ 55.103 *Instructions governing plants operating as official plants processing and packaging dairy products*—(a) *Definitions.* (1) "Rules and regulations in this part" means the rules and regulations governing the sampling, grading, grade labeling, and supervision of packaging of butter, cheese, eggs, poultry, and dressed domestic rabbits (7 CFR, 1946 Supp., Part 55).

(2) "Dairy products" means any one or more of the following products: Butter, cheese (whether natural or processed), milk, cream, and milk products (whether dry) evaporated, or condensed).

(3) "Milk" means cows' milk.

(4) "Regional supervisor" means the regional supervisor or assistant regional supervisor, Dairy Products Section, Dairy and Poultry Inspection and Grading Division of the Administration, in charge of the grading service in a designated geographical area.

(5) "Bactericidal treatment" means to subject to an acceptable germicidal agent.

(6) All other terms which are used herein shall have the meaning applicable to such terms when used in the rules and regulations in this part.

(b) *Survey of plant and premises.* Prior to the inauguration of continuous inspection in a plant, the regional supervisor serving the area in which the plant is located will make a survey and inspection of the plant and premises to determine whether the facilities and methods of operation therein are suitable and adequate for grading service in accordance with: (1) The rules and regulations in this part, (2) the instructions and requirements contained in this section, and (3) such further instructions and requirements, based upon the aforesaid instructions (i) which may hereafter be issued with respect to minimum requirements, facilities, operating methods and procedures, raw materials, and sanitation in official plants and (ii) which are in effect at the time of the aforesaid survey and inspection.

(c) *Premises and plant*—(1) *Premises.* The premises of an official plant shall be free from conditions (including, but not being limited to, strong offensive odors) objectionable to a food processing operation and there shall be an efficient drainage system for the premises.

(2) *Building.* Each official plant shall be maintained in a sanitary condition, including, but not being limited to, the following requirements:

(i) There shall be abundant light (whether natural or artificial, or both) which is well distributed, and sufficient ventilation for each room and compartment thereof to prevent excessive condensation of moisture, so as to insure sanitary and suitable processing and operating conditions.

(ii) There shall be an efficient waste disposal and plumbing system for each such plant. All drains and gutters shall

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be properly installed with approved traps and vents, and shall be maintained in good repair and in proper working order.

(iii) There shall be an ample supply of both hot and cold water; and the water shall be of safe and sanitary quality with adequate facilities for its (*a*) proper distribution throughout the plant and (*b*) protection against contamination and pollution.

(iv) The walls, ceilings, partitions, posts, doors, and other parts of all structures constituting the plant shall be of

such materials, construction, and finish as to permit their efficient and thorough cleaning. The floors shall be constructed of tile, cement, or other equally impervious material and shall be free from openings or rough surfaces which would interfere with maintaining the floors in a clean condition.

(v) Each room and each compartment in which any dairy products are handled, processed, or stored (*a*) shall be so designed and constructed as to insure processing and operating conditions of a clean and orderly character, (*b*) shall be free from objectionable odors and vapors, (*c*) shall be maintained in a clean and sanitary condition, and (*d*) shall possess sufficient refrigerating capacity for the maintenance of proper storage temperatures to protect the quality and condition of the dairy products stored.

(vi) Every practicable precaution shall be taken to exclude dogs, cats, and vermin (including, but not being limited to, rodents and insects) from the official plant in which any dairy products are handled or stored. Screens or other devices adequate to prevent the passage of insects shall be provided for all outside doors and windows that may be opened from time to time. The use of poisons for any purpose in any official plant where any dairy products are processed, handled, or stored is forbidden except under such restrictions and precautions as the Chief, or Acting Chief, of the Dairy and Poultry Inspection and Grading Division of the Administration may prescribe.

(3) *Facilities.* Each official plant shall be equipped with adequate sanitary facilities and accommodations, including, but not being limited to, the following:

(i) There shall be a sufficient number of adequately lighted dressing rooms and toilet rooms, ample in size and conveniently located. Such rooms shall not open directly into rooms or compartments in which any dairy products are handled, processed, or stored. The doors on all toilet rooms shall be self-closing. The dressing rooms and toilet rooms shall be separately ventilated, and shall meet all requirements as to sanitary construction and equipment.

(ii) Lavatory accommodations (including, but not being limited to, hot and cold running water, soap, and single service towels) shall be placed at such locations in the processing and packaging rooms of the official plant as may be essential to assure cleanliness of each person handling any dairy products.

(iii) Clean, white or light-colored outer garments and caps shall be worn by all persons engaged in receiving, testing, processing, or packaging any dairy products, except that hair nets may be substituted for caps.

(iv) No product or material which creates an objectionable condition shall be processed, handled, or stored in any room, compartment, or place where any dairy products are processed, handled, or stored.

(v) Suitable facilities for cleaning and bactericidal treatment of utensils and equipment shall be provided at convenient locations throughout the official plant.

(4) *Equipment and utensils.* All equipment and utensils used for receiving, segregating, transporting, holding, processing, packaging, and storing any dairy products shall be of such design, material, and construction as will (i) enable the examination, segregation, and processing of such dairy products in an efficient, clean, and sanitary manner, and (ii) permit easy access to all parts to insure thorough cleansing and effective bactericidal treatment. Insofar as it is practicable, all such equipment and utensils shall be made of stainless steel or other equally corrosion-resistant and non-copper-bearing material that will not adversely affect the product by chemical action or physical contact. Such equipment and utensils shall be maintained in good repair and sanitary condition.

(d) *Raw milk and farm-separated cream.* The inspection of the raw milk and the farm-separated cream for manufacture or processing into dairy products shall be based, as hereinafter set forth, on the organoleptic examination of each can of raw material at the time of delivery thereof at the official plant, and on quality control measures to determine sediment and bacterial content.

(1) *Organoleptic examination of raw milk: quality control measures for sediment and bacterial content*—(i) *Organoleptic examination of raw milk.* All raw milk delivered at the official plant shall be identified as to the producers from whom received. The condition of the raw milk shall be wholesome and characteristic of normal milk. The flavor and odor of the raw milk shall be fresh and sweet; however, normal feed flavors may be present. The term "fresh and sweet" means free from "old milk" flavor and odor and odor of developed acidity. Any raw milk that shows an abnormal condition (e. g., curdled, ropy, clotted, or unwholesome) shall be kept apart from the raw milk which is permitted to be used for manufacture or processing into dairy products.

(ii) *Quality control measures for sediment.* (*a*) A sediment test shall be conducted not less than twice each month with respect to a single can of raw milk selected at random on the day of testing from each producer's raw milk delivered at the official plant. Each such test shall be in accordance with the "off-the-bottom" method of sediment testing and shall employ the following standard sediment discs:

Standard Disc No. 1 equivalent to 0 mg. sediment
Standard Disc No. 2 equivalent to 0.5 mg. sediment
Standard Disc No. 3 equivalent to 2.5 mg. sediment

(*b*) Unless disqualified pursuant to the other requirements of this paragraph, any producer's raw milk which is delivered at the official plant may be used for manufacturing or processing into dairy products so long as the aforesaid sediment tests yield sediment discs showing sediment not in excess of that shown on Standard Disc No. 2.

(*c*) In the event any sediment test, conducted as aforesaid on a random can of a producer's raw milk, yields a sediment disc in excess of Standard Disc No. 2, all cans of such producer's raw milk from which the random can was selected, shall be tested individually. However, only such cans of the raw milk which yield a sediment disc not in excess of Standard Disc No. 3 may be used as aforesaid. During the 10-day period immediately following the day of such testing, each can of such producer's raw milk delivered at the official plant shall be similarly tested for sediment; and each can of raw milk so tested during this period which does not yield a sediment disc in excess of Standard Disc No. 3 may be used for manufacture or processing as aforesaid.

(*d*) Daily sediment tests required to be conducted on all cans of a producer's raw milk may be discontinued if the tests of all cans of raw milk delivered on three consecutive days yield, with respect to each can so tested, a sediment disc not in excess of Standard Disc No. 2. At the end of the 10-day period, if the daily testing of all cans of the producer's raw milk delivered at the official plant during the period does not disclose that on three consecutive days each can of milk tested yielded a sediment disc not in excess of Standard Disc No. 2, then all of the raw milk thereafter delivered at such official plant by such producer shall be kept apart from the raw milk which is permitted to be used for manufacture or processing into dairy products. At any subsequent time, however, if the raw milk delivered at such plant by such producer discloses, upon daily testing for sediment, that on three consecutive days each can of the raw milk delivered on such days yielded a sediment disc not in excess of Standard Disc No. 2, the raw milk of such producer may thereafter be used for manufacture or processing, as aforesaid, subject to all of the requirements contained in this paragraph.

(*e*) Each can of raw milk which is tested and yields a sediment disc in excess of Standard Disc No. 3 shall be kept apart from the raw milk which is permitted to be used for manufacture or processing into dairy products.

(iii) *Quality control measures for bacterial content.* A test to determine the bacterial content of the raw milk shall be conducted not less than twice each month with respect to a mixed sample of every producer's milk delivered at the official plant on the day of testing. Each such test shall be the Methylene Blue Reduction Test or any other recognized test for determining bacterial content. The following classifications for raw milk are established on the basis of the Methylene Blue Reduction Test conducted on a mixed sample of such milk:

Class 1: The mixed sample tested is not decolorized in 3½ hours.
Class 2: The mixed sample tested is not decolorized in 2½ hours, but is decolorized in less than 3½ hours.
Class 3: The mixed sample tested is not decolorized in 1 hour, but is decolorized in less than 2½ hours.
Class 4: The mixed sample tested is decolorized in less than 1 hour.

(*a*) Unless disqualified pursuant to the other requirements of this paragraph, any producer's raw milk which is delivered at the official plant may be used for

manufacturing or processing into dairy products so long as the test for bacterial content shows the milk to be either Class 1 or Class 2.

(b) In the event the test for bacterial content on a mixed sample of raw milk delivered by a producer discloses that the raw milk is Class 3, such milk may be used as aforesaid; however, during the 4-week period immediately following the day of such test, the raw milk delivered by such producer shall be similarly tested at least twice each week and such milk may also be used, as aforesaid, so long as the test for bacterial content does not show that the milk is Class 4.

(c) The tests for bacterial content required to be conducted during the 4-week period may be discontinued when the results of each of two consecutive tests for bacterial content show that the producer's raw milk was either Class 1 or Class 2. At the end of the 4-week period, if the tests conducted on mixed samples of the producer's raw milk delivered at the official plant do not disclose two consecutive tests with respect to which the raw milk represented by the samples was Class 1 or Class 2, then all of the raw milk thereafter delivered at such official plant by such producer shall be kept apart from the raw milk which is permitted to be used for manufacture or processing into dairy products. At any subsequent time, however, if the raw milk delivered at such official plant by such producer discloses, upon testing as aforesaid, that on two consecutive tests the raw milk represented by the respective mixed samples was Class 1 or Class 2, the raw milk of such producer may thereafter be used for manufacture or processing into dairy products, subject to all of the requirements contained in this paragraph.

(d) When a test for bacterial content on a mixed sample of a producer's raw milk discloses that the raw milk represented by the sample is Class 4, such milk shall be kept apart from the raw milk which is permitted to be used for manufacture or processing into dairy products.

(2) *Organoleptic examination of farm-separated cream.* The condition of farm-separated cream shall be wholesome and characteristic of normal cream. The grading and segregation of farm-separated cream shall be determined by the organoleptic examination of each can of such cream for condition, flavor, and odor; and, with respect to such cream that is to be used in the manufacture or processing into butter, the grading and segregation thereof shall be consistent with the applicable flavor classification for creamery butter as set forth in the United States Standards for Grades of Creamery Butter (7 CFR, Cum. Supp., Part 63). Any farm-separated cream that shows an abnormal or unwholesome condition shall be kept apart from the farm-separated cream which is permitted to be used for manufacture or processing into dairy products.

(3) *Protection of raw material while in transit.* All raw milk and farm-separated cream received at an official plant shall, while in transit from the farm where produced, be adequately protected from extreme temperatures, dust, and other adverse conditions.

(e) *Operations and operating procedures.* (1) All operations in the receiving, transporting, segregating, holding, processing, packaging, and storing of dairy products shall be strictly in accord with clean and sanitary methods and shall be conducted as rapidly as is practicable and at temperatures that will not tend to cause (i) any material increase in bacterial content, or (ii) any deterioration or contamination of such products.

(2) All dairy products shall be subjected to continuous inspection throughout each processing operation. All dairy products which are not processed in accordance with the instructions contained in this section or are not fit for human food shall be removed and segregated prior to any further processing operation in connection with the production of dairy products which are to be identified with official identification.

(3) All substances and ingredients used, or added, in the processing of any dairy products shall be clean and fit for human food.

(4) The methods and procedures employed in the receiving, segregating, and processing of raw materials in an official plant shall be adequate to result in a satisfactory finished product. If, to assure a satisfactory finished product, changes in methods and procedures are recommended by the regional supervisor serving the area in which the plant is located, such changes shall be effectuated as soon as practicable.

(5) Packages or containers for dairy products shall be clean when being filled with any such products; and all reasonable precautions shall be taken to avoid soiling or contaminating the surface of any package or container liner which is, or will be, in direct contact with such products.

(f) *Personnel; health.* (1) No person affected with any communicable disease (including, but not being limited to, tuberculosis) in a transmissible stage shall be permitted in any room or compartment where exposed or unpacked dairy products are prepared, processed, or otherwise handled.

(2) Spitting or smoking is prohibited in each room and in each compartment where any exposed or unpacked dairy products are prepared, processed, or otherwise handled.

(3) All necessary precautions shall be taken to prevent the contamination of dairy products with any foreign substance (including, but not being limited to, perspiration, hair, cosmetics, and medicaments).

(g) *Final inspection of dairy products.* (1) Representative samples from each lot of dairy products shall be inspected or caused to be inspected for class, quality, and condition by the official resident inspector. Where laboratory analysis is required to determine class, quality, and condition, the official resident inspector will select representative samples from each lot of dairy products for such analysis.

(h) *Official identification.* (1) Only dairy products manufactured or processed in accordance with the instructions and requirements in this section and the rules and regulations in this part may be identified with official identification.

(2) Sketches, proofs, or photostatic copies of all proposed packaging materials, grade labels, and inspection marks to be used as official identification should be submitted to the Chief of the Dairy and Poultry Inspection and Grading Division, PMA, U. S. Department of Agriculture, Washington 25, D. C., for tentative approval prior to acquisition of a supply of material bearing such identification.

(3) Finished copies, in triplicate, of the tentatively approved packaging materials, grade labels, and inspection marks shall be transmitted to the Chief of the Dairy and Poultry Inspection and Grading Division, PMA, U. S. Department of Agriculture, Washington 25, D. C., for final approval prior to their use as official identification. (Pub. Law 712, 80th Cong.)

These instructions and requirements shall become effective thirty days after publication in the FEDERAL REGISTER.

Issued at Washington, D. C., this 29th day of October 1948.

[SEAL] JOHN I. THOMPSON,
Assistant Administrator, Production and Marketing Administration.

[F. R. Doc. 48-9699; Filed Nov. 3, 1948; 8:57 a. m.]

Chapter XV—Administrator, Research and Marketing Act

PART 1900—ORGANIZATION, FUNCTIONS AND PROCEDURE

DISCONTINUANCE OF CODIFICATION

The codification of Part 1900 is hereby discontinued.

Future amendments to descriptions of organization and functions will appear in the Notices section of the FEDERAL REGISTER.

Dated: October 29, 1948.

[SEAL] E. A. MEYER,
Administrator, Research and Marketing Act.

[F. R. Doc. 48-9700; Filed, Nov. 3, 1948; 8:57 a. m.]

TITLE 14—CIVIL AVIATION

Chapter II—Civil Aeronautics Administration

[Amdt. 3]

PART 550—FEDERAL AID TO PUBLIC AGENCIES FOR DEVELOPMENT OF PUBLIC AIRPORTS

PROJECT COSTS; CLASS 3 OR SMALLER AIRPORTS

Acting pursuant to the authority vested in me by the Federal Airport Act (60 Stat. 170; Pub. Law 377, 79th Cong.), I hereby amend Part 550 of the regulations of the Administrator of Civil Aeronautics as follows:

By amending § 550.4 (c) (1) (i) to read as follows:

§ 550.4 *Project costs.* * * *

(c) *United States' share of project costs.* * * *

(1) *Project costs other than land acquisition costs*—(i) *Class 3 or smaller airports.* The United States' share of the project costs (other than costs of land acquisition) of an approved project for the development of a Class 3 or smaller airport, wherever located, shall be 50 per cent of the allowable project costs of the project (other than costs of land acquisition), except that this share, in the case of any State containing unappropriated and unreserved public lands and nontaxable Indian lands (individual and tribal) exceeding 5 per cent of the total area of all lands therein shall be increased as provided in section 10 (b) of the act, and except that the United States' share shall be 75 per cent in the case of the Territory of Alaska, all as set forth in the following table:

UNITED STATES' PERCENTAGE SHARE OF ALLOWABLE PROJECT COSTS IN STATES CONTAINING UNAPPROPRIATED AND UNRESERVED PUBLIC LANDS AND NONTAXABLE INDIAN LANDS

State	Percentage
Arizona	60.83
California	54.16
Colorado	53.33
Idaho	56.29
Montana	53.53
Nevada	62.50
New Mexico	56.90
Oklahoma	51.39
Oregon	56.02
South Dakota	53.09
Utah	61.88
Washington	51.78
Wyoming	57.49

NOTE: The percentages listed in this table will vary as changes occur with respect to the area of unappropriated and unreserved public lands and nontaxable Indian lands in the several States, in which event such changed percentages will be used by the Administrator in determining the United States' share of allowable project costs other than costs of land acquisition.

This amendment shall become effective upon publication in the FEDERAL REGISTER.

(60 Stat. 170, 49 U. S. C. 1101 et seq.)

[SEAL] D. W. RENTZEL,
Administrator of Civil Aeronautics.

[F. R. Doc. 48-9667; Filed, Nov. 3, 1948; 8:48 a. m.]

TITLE 15—COMMERCE

Chapter III—Bureau of Foreign and Domestic Commerce, Department of Commerce

[3d Gen. Rev. of Export Regs., Amdt. 12]

PART 370—ORDERS AND DELEGATIONS OF AUTHORITY

VALIDITY OF EXPORT LICENSES

Section 370.2 *Orders modifying validity of export licenses* is amended by adding thereto a new paragraph (e) to read as follows:

(e) Export shipments of gasoline (including aviation gasoline), kerosene, gas oil, and distillate fuel oil from West Coast ports of the United States are prohibited; and no license authorizing the exportation of any of said commodities shall be valid for use in clearing such shipments for export from such West Coast ports. The provisions of this paragraph shall not apply to exportations to Canada, or to exportations of any of said commodities made in accordance with the provisions of the general license for shipments of limited value "GLV," as set forth in § 372.10.

This amendment shall become effective as of September 11, 1948, 12:01 a. m., P. d. s. t.

(Sec. 6, 54 Stat. 714, 55 Stat. 206, 56 Stat. 463, 58 Stat. 671, 59 Stat. 270, 60 Stat. 215, 61 Stat. 214, 61 Stat. 321; Pub. Law 395, 80th Cong.; 50 U. S. C. App. and Sup. 701, 702; E. O. 9630, Sept. 27, 1945, 10 F. R. 12245; E. O. 9919, Jan. 3, 1948, 13 F. R. 59)

Dated: October 29, 1948.

FRANCIS MCINTYRE,
Assistant Director,
Office of International Trade.

[F. R. Doc. 48-9680; Filed, Nov. 3, 1948; 8:51 a. m.]

[3d Gen. Rev. of Export Regs., Amdt. 13]

PART 374—PROVISIONS FOR INDIVIDUAL AND OTHER VALIDATED LICENSES

APPLICATIONS FOR EXPORT LICENSES TO SOUTH KOREA, JAPAN, MARCUS ISLAND AND GERMANY

Section 374.14 *Applications for licenses to export to South Korea, Japan, Marcus Island and Germany* is amended by revising paragraph (a) to read as follows:

(a) Except as noted below, applications for licenses to export commodities listed in § 399.1 of this chapter to South Korea, Japan, and Marcus Island must be accompanied by a true or photostat copy of such import permit document as may be required by the appropriate occupying government authorities having jurisdiction over approval of importations to those destinations.

Applications for licenses to export commodities to Japan and South Korea which are consigned to missionaries or their duly accredited agents need not be accompanied by import permits or photostat copies thereof: *Provided,* The commodities contained in such shipment are for the sole use and consumption of full-time church workers or their dependents in Japan or South Korea, as the case may be; *And provided further,* That the applicant makes the following certification on the export license application and on the outside of all packages contained in each such shipment:

This shipment of _____ is for the sole use and consumption of missionaries, full-time church workers, or their dependents, in _____
(Name of country)
and will not be used for any other purpose.

This amendment shall become effective November 2, 1948, as to South Korea, and as of August 5, 1948, as to Japan.

(Sec. 6, 54 Stat. 714, 55 Stat. 206, 56 Stat. 463, 58 Stat. 671, 59 Stat. 270, 60 Stat. 215, 61 Stat. 214, 61 Stat. 321; Pub. Law 395, 80th Cong.; 50 U. S. C. App. and Supp. 701, 702; E. O. 9630, Sept. 27, 1945, 10 F. R. 12245; E. O. 9919, Jan. 3, 1948, 13 F. R. 59)

Dated: October 25, 1948.

FRANCIS MCINTYRE,
Assistant Director,
Office of International Trade.

[F. R. Doc. 48-9681; Filed, Nov. 3, 1948; 8:51 a. m.]

[3d Gen. Rev. of Export Regs., Amdt. 14]

PART 377—DENIAL OF LICENSING PRIVILEGES

PART 378—APPEALS

PROCEDURE FOR APPEALS

1. Section 377.11 *Appeal* is amended to read as follows:

§ 377.11 *Appeal.* A respondent may appeal in writing to the Appeals Board of the Office of International Trade (established by § 378.1 of this chapter), whose determination shall be final. Such appeal shall be taken within ten (10) days after receipt of a suspension order by the respondent. The appeal shall be considered on the basis of the order of the Director of the Commodities Division, the report of the Compliance Commissioner and the record made before the Commissioner, including the transcript of the hearing and any bill of exceptions filed by the respondent. Oral argument will be permitted only upon direction of the Appeals Board. The Appeals Board shall not consider facts or arguments affecting the merits of the policy embodied in the rules or regulations alleged to have been violated. An order denying the privilege to obtain or use an export license shall remain in effect pending disposition of the appeal, unless otherwise ordered by the Appeals Board.

Appeals shall be filed with and addressed to the Appeals Board, Bureau of Foreign and Domestic Commerce, Department of Commerce, Washington 25, D. C. The provisions of § 378.1 of this chapter concerning grounds for appeal, preparation of appeals in general, records and decisions shall be applicable to appeals provided for by this section.

2. Section 378.1 *General procedure for appeals* is amended in the following particulars:

Subparagraph (2) of paragraph (b) *Appealability of regulations and administrative actions* is amended to read as follows:

(2) Any administrative action of the Office of International Trade or duly authorized employees thereof, taken under the aforementioned authority, including appeals from compliance actions as provided for by § 377.11 of this chapter.

(Sec. 6, 54 Stat. 714, 55 Stat. 206, 56 Stat. 463, 58 Stat. 671, 59 Stat. 270, 60 Stat. 215, 61 Stat. 214, 61 Stat. 321; Pub. Law 395, 80th Cong.; 50 U. S. C. App. and Sup. 701, 702; E. O. 9630, Sept. 27, 1945, 10 F. R. 12245; E. O. 9919, Jan. 3, 1948, 13 F. R. 59)

Dated: October 29, 1948.

FRANCIS MCINTYRE,
Assistant Director,
Office of International Trade.

[F. R. Doc. 48-9679; Filed, Nov. 3, 1948; 8:51 a. m.]

TITLE 22—FOREIGN RELATIONS

Chapter I—Department of State

[Departmental Reg. 108.81]

PART 15—INSIGNIA OF RANK

Under authority contained in R. S. 161 (5 U. S. C. 22), present Part 15 (old Part 21) of Title 22 of the Code of Federal Regulations is superseded by the following regulations.

Sec.
15.1 Office of the Secretary of State.
15.2 Office of the Under Secretary of State.

§ 15.1 *Office of the Secretary of State.* The official flag indicative of the office of Secretary of State shall be as follows: On a blue rectangular field a white disk bearing the official coat of arms of the United States adopted by the act of June 20, 1782, in proper colors. In each of the four corners a white five-pointed star with one point upward. The colors and automobile flag to be the same design, adding a white fringe. For the colors a cord and tassel of blue and white to be added. The sizes to be in accordance with military and naval customs. (R. S. 161, 5 U. S. C. 22)

§ 15.2 *Office of the Under Secretary of State.* The official flag indicative of the office of the Under Secretary of State shall be as follows: On a white rectangular field a blue disk bearing the official coat of arms of the United States adopted by act of June 20, 1782, in proper colors. In each of the four corners a five-pointed star with one point upward. The colors and automobile flag to be the same design, adding a blue fringe. For the colors a cord and tassel of white and blue to be added. The sizes to be in accordance with military and naval customs. (R. S. 161, 5 U. S. C. 22)

This regulation shall become effective immediately upon publication in the FEDERAL REGISTER.

Approved: November 1, 1948.

[SEAL] JOHN E. PEURIFOY,
Assistant Secretary of State.

[F. R. Doc. 48-9678; Filed, Nov. 3, 1948; 8:51 a. m.]

TITLE 25—INDIANS

Chapter I—Office of Indian Affairs, Department of the Interior

Subchapter L—Irrigation Projects: Operation and Maintenance

PART 130—OPERATION AND MAINTENANCE CHARGES

AHTANUM INDIAN IRRIGATION PROJECT, WASHINGTON

On June 25, 1948 notice of intention to amend § 130.1 was published in the daily issue of the FEDERAL REGISTER (13 F. R. 3485), said proposed amendment consisting of an increase of $1.00 in the annual operation and maintenance assessment against the lands of the Ahtanum Indian Irrigation Project. Interested persons were thereby given opportunity to participate in the preparing of the amendments by submitting data or arguments within 30 days from the date of publication of the notice.

Objection to the proposed increase in the rate of assessment was received from the Yakima Tribal Council of the Yakima Indian Reservation and the Yakima Reservation Irrigation District. The objections have been duly considered both by undersigned and the Commisioner of Indian Affairs. It has been decided that the increase in rate should be limited to 75¢ per acre. Accordingly and by virtue of the authority delegated to me by the Commissioner of Indian Affairs (25 CFR 02.8 (l)) the said § 130.1 is hereby amended to read as follows:

§ 130.1 *Charges.* Pursuant to the provisions of the Acts of August 1, 1914 and March 7, 1928 (38 Stat. 583 and 45 Stat. 210; 25 U. S. C. 385, 387), the operation and maintenance charges on lands of the Ahtanum Indian Irrigation Project, Yakima Indian Reservation, Washington, for the calendar year 1949 and subsequent years until further notice, are hereby fixed at $2.25 per acre per annum for each irrigable acre of land to which water can be delivered from the project works. (38 Stat. 583, 45 Stat. 210; 25 U. S. C. 385, 387; 25 CFR 02.8 (l))

E. MORGAN PRYSE,
Regional Director.

OCTOBER 27, 1948.

[F. R. Doc. 48-9668; Filed, Nov. 3, 1948; 8:48 a. m.]

PART 130—OPERATION AND MAINTENANCE CHARGES

TOPPENISH-SIMCOE INDIAN IRRIGATION PROJECT, WASHINGTON

On June 25, 1948 notice of intention to amend § 130.73 was published in the daily issue of the FEDERAL REGISTER (13 F. R. 3485), said proposed amendment consisting of an increase of $1.00 in the annual operation and maintenance assessment against the lands of the Toppenish-Simcoe Indian Irrigation Project. Interested persons were thereby given opportunity to participate in the preparing of the amendments by submitting data or arguments within 30 days from the date of publication of the notice.

Objections to the proposed increase in the rate of assessment were received from the Yakima Tribal Council of the Yakima Indian Reservation and the Yakima Reservation Irrigation District. The objections have been duly considered both by undersigned and the Commissioner of Indian Affairs. It has been decided that the increase in rate should be limited to 75¢ per acre. Accordingly and by virtue of the authority delegated to me by the Commissioner of Indian Affairs (25 CFR 02.8 (l)) the said § 130.73 is hereby amended to read as follows:

§ 130.73 *Charges.* Pursuant to the provisions of the acts of August 1, 1914 and March 7, 1928 (38 Stat. 583 and 45 Stat. 210; 25 U. S. C. 385, 387), the operation and maintenance charges for the lands under the Toppenish-Simcoe Indian Irrigation Project, Yakima Indian Reservation, Washington, for the calendar year 1949 and subsequent years until further notice, are hereby fixed as follows:

All lands for which application for water is made and approved by Project Engineer, per acre	$1.75

(38 Stat. 583, 45 Stat. 210; 25 U. S. C. 385, 387; 25 CFR 02.8 (l))

E. MORGAN PRYSE,
Regional Director.

OCTOBER 27, 1948.

[F. R. Doc. 48-9670; Filed, Nov. 3, 1948; 8:48 a. m.]

PART 130—OPERATION AND MAINTENANCE CHARGES

WAPATO INDIAN IRRIGATION PROJECT, WASHINGTON

On June 25, 1948 notice of intention to amend § 130.86 was published in the daily issue of the FEDERAL REGISTER (13 F. R. 3485), said proposed amendment consisting of an increase of $1.00 in the annual "Flat Rate" operation and maintenance assessment against the lands of the Wapato Indian Irrigation Project. Interested persons were thereby given opportunity to participate in the preparing of the amendments by submitting data or arguments within 30 days from the date of publication of the notice.

Objection to the proposed increase in the rate of assessment was received from the Yakima Tribal Council of the Yakima Indian Reservation and the Yakima Reservation Irrigation District. The objections have been duly considered both by undersigned and the Commissioner of Indian Affairs. It has been decided that the increase in rate should be limited to 75¢ per acre. Accordingly and by virtue of the authority delegated to me by the Commissioner of Indian Affairs (25 CFR 02.8 (l)) the said § 130.86 is hereby amended to read as follows:

§ 130.86 *Charges.* Pursuant to the provisions of the acts of August 1, 1914 and March 7, 1928 (38 Stat. 583, 45 Stat. 210; 25 U. S. C. 385, 387), the operation and maintenance charges on assessable lands under the Wapato Indian Irrigation Project, Yakima Indian Reservation, Washington, for the calendar year 1949 and subsequent years until further notice are hereby fixed as follows:

(a) *Minimum charges.* For all tracts in non-contiguous single ownership	$5.00
(b) *Flat rate.* Upon all farm units or tracts, for each assessable acre	3.25
(c) *Storage operation and maintenance.* For all lands with a storage water right, known as "B" lands, in addition to other charges per acre	.30

(38 Stat. 583, 45 Stat. 210; 25 U. S. C. 385, 387; 25 CFR 02.8 (l))

E. MORGAN PRYSE,
Regional Director.

OCTOBER 27, 1948.

[F. R. Doc. 48-9669; Filed, Nov. 3, 1948; 8:48 a. m.]

PROPOSED RULE MAKING

DEPARTMENT OF THE TREASURY

Bureau of Internal Revenue

[26 CFR, Parts 410, 411]

TAXES UNDER THE RAILROAD RETIREMENT TAX ACT

NOTICE OF PROPOSED RULE MAKING

Notice is hereby given, pursuant to the Administrative Procedure Act, approved June 11, 1946, that the regulations set forth in tentative form below are proposed to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury. Prior to the final adoption of such regulations, consideration will be given to any data, views, or arguments pertaining thereto which are submitted in writing in duplicate to the Commissioner of Internal Revenue, Washington 25, D. C., within the period of 30 days from the date of publication of this notice in the FEDERAL REGISTER. The proposed regulations are to be issued under the authority contained in sections 1535 and 3791 of the Internal Revenue Code (53 Stat. 183, 467; 26 U. S. C. 1535, 3791) and other provisions of the internal revenue laws and in subchapter B of chapter 9 of the Internal Revenue Code (53 Stat. 179; 26 U. S. C., c. 9, subc. B), as last amended by sections 1 and 3 of the act approved July 31, 1946 (60 Stat. 722, 723).

[SEAL] FRED S. MARTIN,
Acting Commissioner of Internal Revenue.

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SUBPART G—ADJUSTMENT OF EMPLOYEES' TAX AND EMPLOYERS' TAX

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SUBPART H—REFUNDS, CREDITS, AND ABATEMENTS

411.801 Refund or credit of overpayments which are not adjustable; abatement of overassessments.
411.802 Credit and refund of taxes paid under Railroad Retirement Tax Act or corresponding prior law for period during which liability existed under Federal Insurance Contributions Act or corresponding prior law.

SUBPART I—MISCELLANEOUS PROVISIONS

ASSESSMENT AND COLLECTION OF UNDERPAYMENTS

411.901 Assessment and collection of underpayments.

JEOPARDY ASSESSMENTS

411.902 Jeopardy assessments.

INTEREST AND ADDITIONS TO TAX

411.903 Interest.
411.904 Addition to tax for failure to pay an assessment after notice and demand.
411.905 Additions to tax for delinquent or false returns.

RULES AND REGULATIONS

411.906 Promulgation of regulations.

AUTHORITY: §§ 411.101 to 411.906 issued under secs. 1535 and 3791 of the Internal Revenue Code (53 Stat. 183, 467; 26 U. S. C. 1535, 3791).

SUBPART A—INTRODUCTORY PROVISIONS

§ 411.101 *Introduction.* These regulations, which constitute Part 411 of Title 26 of the Code of Federal Regulations, are prescribed under the Railroad Retirement Tax Act (subchapter B, chapter 9, Internal Revenue Code). The applicable provisions of the act, as well as certain applicable provisions of internal-revenue laws of particular importance, will be found in the appropriate places in, and are to be read in connection with, the regulations in this part. References to sections of law are references to the Railroad Retirement Tax Act, unless otherwise expressly indicated. Inasmuch as these regulations constitute Part 411 of Title 26 of the Code of Federal Regulations, each section of the regulations bears a number commencing with 411 and a decimal point. References to sections not preceded by "411." are references to sections of law.

§ 411.102 *Scope of regulations*—(a) *Taxes and related definitions.* The regulations in this part relate to the employers' tax, the employees' tax, and the employee representatives' tax, imposed by the Railroad Retirement Tax Act, with respect to compensation paid after December 31, 1948, for services rendered after December 31, 1946. (As to when compensation is deemed to be paid, see § 411.208.) The definitions of the terms "employer", "employee", "employee representative", and "compensation" set forth in the regulations in this part are to be used only in connection with such regulations and are applicable only to services rendered after December 31, 1946.

For provisions relating to the respective taxes and definitions with respect to compensation paid prior to January 1, 1949, or earned prior to January 1, 1947, see Regulations 100 (26 CFR, Part 410) and such regulations as made applicable to the Internal Revenue Code by Treasury Decision 4885 (26 CFR, Cum. Supp., p. 5876).

(b) *Additional subjects covered*—(1) *Returns and payment of tax.* The regulations in this part relate to returns and payment of employers' tax, employees' tax, and employee representatives' tax, required to be reported on returns for periods beginning after December 31, 1948. (For provisions relating to the period for which compensation is required to be reported, see § 411.601.)

(2) *Records.* The regulations in this part relate to the records of employers and employees with respect to remuneration paid after December 31, 1948, for services rendered after December 31, 1936, and to the records of employee representatives with respect to remuneration paid after December 31, 1948, for services rendered after December 31, 1946.

(3) *Adjustments, settlements, and claims.* The regulations in this part relate to adjustments, settlements, and claims for refund, credit, or abatement, made after December 31, 1948, in connection with the employers' tax and the employees' tax under the Railroad Retirement Tax Act in force before, on, or after January 1, 1947, or under the Carriers Taxing Act of 1937, but not to any adjustment reported, or any credit taken, on any return for a tax-return period ended prior to January 1, 1949. However, § 410.707 (article 707 of Regulations 100) and of such regulations as made applicable to the Internal Revenue Code remains in full force and effect with respect to the treatment under section 4 (b) of the act approved August 13, 1940 (54 Stat. 786), of the employers' tax and the employees' tax with respect to certain coal mining services performed in the employ of a carrier by railroad subject to part I of the Interstate Commerce Act. The regulations in this part also relate to claims for refund, credit, or abatement made after December 31, 1948, in connection with the employee representatives' tax under the Railroad Retirement Tax Act in force before, on, or after January 1, 1947, or under the Carriers Taxing Act of 1937.

§ 411.103 *Extent to which the regulations in this part supersede Part 410.* The regulations in this part, with respect to the subject matter within the scope

thereof, supersede Regulations 100, approved October 12, 1937 (26 CFR, Part 410), as amended, and such regulations as made applicable to subchapter B of chapter 9 and other provisions of the Internal Revenue Code by Treasury Decision 4885, approved February 11, 1939 (26 CFR, Cum. Supp., p. 5876), together with any amendments to such regulations as so made applicable to the Internal Revenue Code.

SUBPART B—DEFINITIONS

SECTION 3 (g) OF THE ACT OF JULY 31, 1946 (60 STAT. 725)

RAILROAD RETIREMENT TAX ACT

Subchapter B of Chapter 9 of the Internal Revenue Code is amended by adding at the end thereof the following new section:

SEC. 1538. *Title of subchapter.* This subchapter may be cited as the "Railroad Retirement Tax Act."

SECTION 2 OF THE ACT OF FEBRUARY 10, 1939 (53 STAT. 1)

INTERNAL REVENUE CODE

This act and the internal revenue title incorporated herein shall be known as the Internal Revenue Code and may be cited as "I. R. C.".

SECTION 1532 OF THE ACT

DEFINITIONS

As used in this subchapter:

(a) *Employer.* The term "employer" means any carrier (as defined in subsection (h) of this section), and any company which is directly or indirectly owned or controlled by one or more such carriers or under common control therewith, and which operates any equipment or facility or performs any service (except trucking service, casual service, and the casual operation of equipment or facilities) in connection with the transportation of passengers or property by railroad, or the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad, and any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the property or operating all or any part of the business of any such employer: *Provided, however,* That the term "employer" shall not include any street, interurban, or suburban electric railway, unless such railway is operating as a part of a general steam-railroad system of transportation, but shall not exclude any part of the general steam-railroad system of transportation now or hereafter operated by any other motive power. The Interstate Commerce Commission is hereby authorized and directed upon request of the Commissioner of Internal Revenue, or upon complaint of any party interested, to determine after hearing whether any line operated by electric power falls within the terms of this proviso. The term "employer" shall also include railroad associations, traffic associations, tariff bureaus, demurrage bureaus, weighing and inspection bureaus, collection agencies nad other associations, bureaus, agencies, or organizations controlled and maintained wholly or principally by two or more employers as hereinbefore defined and engaged in the performance of services in connection with or incidental to railroad transportation; and railway labor organizations, national in scope, which have been or may be organized in accordance with the provisions of the Railway Labor Act, as amended, and their State and National legislative committees and their general committees and their insurance departments and their local lodges and divisions, established pursuant to the constitution and bylaws of such organizations. The term "employer" shall not include any company by reason of its being engaged in the mining of coal, the supplying of coal to an employer where delivery is not beyond the mine tipple, and the operation of equipment or facilities therefor, or in any of such activities.

(b) *Employee.* The term "employee" means any individual in the service of one or more employers for compensation: *Provided, however,* That the term "employee" shall include an employee of a local lodge or division defined as an employer in subsection (a) only if he was in the service of or in the employment relation to a carrier on or after August 29, 1935. An individual shall be deemed to have been in the employment relation to a carrier on August 29, 1935, if (i) he was on that date on leave of absence from his employment, expressly granted to him by the carrier by whom he was employed, or by a duly authorized representative of such carrier, and the grant of such leave of absence will have been established to the satisfaction of the Railroad Retirement Board before July 1947; or (ii) he was in the service of a carrier after August 29, 1935, and before January 1946 in each of six calendar months, whether or not consecutive; or (iii) before August 29, 1935, he did not retire and was not retired or discharged from the service of the last carrier by whom he was employed or its corporate or operating successor, but (A) solely by reason of his physical or mental disability he ceased before August 29, 1935, to be in the service of such carrier and thereafter remained continuously disabled until he attained age sixty-five or until August 1945, or (B) solely for such last stated reason a carrier by whom he was employed before August 29, 1935, or a carrier who is its successor did not on or after August 29, 1935, and before August 1945 call him to return to service, or (C) if he was so called he was solely for such reason unable to render service in six calendar months as provided in clause (ii); or (iv) he was on August 29, 1935, absent from the service of a carrier by reason of a discharge which, within one year after the effective date thereof, was protested, to an appropriate labor representative or to the carrier, as wrongful, and which was followed within ten years of the effective date thereof by his reinstatement in good faith to his former service with all his seniority rights: *Provided,* That an individual shall not be deemed to have been on August 29, 1935, in the employment relation to a carrier if before that date he was granted a pension or gratuity on the basis of which a pension was awarded to him pursuant to section 6 of the Railroad Retirement Act of 1937, or if during the last pay-roll period before August 29, 1935, in which he rendered service to a carrier he was not in the service of an employer, in accordance with subsection (d), with respect to any service in such pay-roll period, or if he could have been in the employment relation to an employer only by reason of his having been, either before or after August 29, 1935, in the service of a local lodge or division defined as an employer in subsection (a).

The term "employee" includes an officer of an employer.

The term "employee" shall not include any individual while such individual is engaged in the physical operations consisting of the mining of coal, the preparation of coal, the handling (other than movement by rail with standard railroad locomotives) of coal not beyond the mine tipple, or the loading of coal at the tipple.

(c) *Employee Representative.* The term "employee representative" means any officer or official representative of a railway labor organization other than a labor organization included in the term "employer" as defined in subsection (a), who before or after June 29, 1937, was in the service of an employer as defined in subsection (a) and who is duly authorized and designated to represent employees in accordance with the Railway Labor Act, 44 Stat. 577 (U. S. C., Title 45, c. 18), as amended, and any individual who is regularly assigned to or regularly employed by such officer or official representative in connection with the duties of his office.

(d) *Service.* An individual is in the service of an employer whether his service is rendered within or without the United States if (i) he is subject to the continuing authority of the employer to supervise and direct the manner of rendition of his service, or he is rendering professional or technical services and is integrated into the staff of the employer, or he is rendering, on the property used in the employer's operations, other personal services the rendition of which is integrated into the employer's operations, and (ii) he renders such service for compensation: *Provided, however,* That an individual shall be deemed to be in the service of an employer, other than a local lodge or division or a general committee of a railway-labor-organization employer, not conducting the principal part of its business in the United States only when he is rendering service to it in the United States; and an individual shall be deemed to be in the service of such a local lodge or division only if (1) all, or substantially all, the individuals constituting its membership are employees of an employer conducting the principal part of its business in the United States; or (2) the headquarters of such local lodge or division is located in the United States; and an individual shall be deemed to be in the service of such a general committee only if (1) he is representing a local lodge or division described in clauses (1) or (2) immediately above; or (2) all, or substantially all, the individuals represented by it are employees of an employer conducting the principal part of its business in the United States; or (3) he acts in the capacity of a general chairman or an assistant general chairman of a general committee which represents individuals rendering service in the United States to an employer, but in such case if his office or headquarters is not located in the United States and the individuals represented by such general committee are employees of an employer not conducting the principal part of its business in the United States, only such proportion of the remuneration for such service shall be regarded as compensation as the proportion which the mileage in the United States under the jurisdiction of such general committee bears to the total mileage under its jurisdiction, unless such mileage formula is inapplicable, in which case such other formula as the Railroad Retirement Board may have prescribed pursuant to subsection (c) of section 1 of the Railroad Retirement Act of 1937 shall be applicable, and if the application of such mileage formula, or such other formula as the Board may prescribe, would result in the compensation of the individual being less than 10 per centum of his remuneration for such service no part of such remuneration shall be regarded as compensation: *Provided further,* That an individual not a citizen or resident of the United States shall not be deemed to be in the service of an employer when rendering service outside the United States to an employer who is required under the laws applicable in the place where the service is rendered to employ therein, in whole or in part, citizens or residents thereof; and the laws applicable on August 29, 1935, in the place where the service is rendered shall be deemed to have been applicable there at all times prior to that date.

(e) *Compensation.* The term "compensation" means any form of money remuneration earned by an individual for services rendered as an employee to one or more employers, or as an employee representative, including remuneration paid for time lost as an employee, but remuneration paid for time lost shall be deemed earned in the month in which such time is lost. Such term does not

include tips, or the voluntary payment by an employer, without deduction from the remuneration of the employee, of the tax imposed on such employee by section 1500. Compensation which is earned during the period for which the Commissioner shall require a return of taxes under this subchapter to be made and which is payable during the calendar month following such period shall be deemed to have been paid during such period only. For the purpose of determining the amount of taxes under sections 1500 and 1520, compensation earned in the service of a local lodge or division of a railway-labor-organization employer shall be disregarded with respect to any calendar month if the amount thereof is less than $3 and (1) such compensation is earned before April 1, 1940, and the taxes thereon under such sections are not paid before July 1, 1940, or (2) such compensation is earned after March 31, 1940.

A payment made by an employer to an individual through the employer's pay roll shall be presumed, in the absence of evidence to the contrary, to be compensation for service rendered by such individual as an employee of the employer in the period with respect to which the payment is made. An employee shall be deemed to be paid, "for time lost" the amount he is paid by an employer with respect to an identifiable period of absence from the active service of the employer, including absence on account of personal injury, and the amount he is paid by the employer for loss of earnings resulting from his displacement to a less remunerative position or occupation. If a payment is made by an employer with respect to a personal injury and includes pay for time lost, the total payment shall be deemed to be paid for time lost unless, at the time of payment, a part of such payment is specifically apportioned to factors other than time lost, in which event only such part of the payment as is not so apportioned shall be deemed to be paid for time lost.

(f) *United States.* The term "United States" when used in a geographical sense means the States, Alaska, Hawaii, and the District of Columbia.

(g) *Company.* The term "company" includes corporations, associations, and joint-stock companies.

(h) *Carriers.* The term "carrier" means an express company, sleeping-car company, or carrier by railroad, subject to part I of the Interstate Commerce Act.

(i) *Person.* The term "person" means an individual, a partnership, an association, a joint-stock company, or a corporation. (Sec. 1532, I. R. C., as amended by sec. 3, Act of June 11, 1940, 54 Stat. 264; sec. 1, Act of Aug. 13, 1940, 54 Stat. 785; sec. 27 (a), Act of Oct. 10, 1940, 54 Stat. 1101; sec. 14, Act of Apr. 8, 1942, 56 Stat. 209; secs. 1, 3 (e), (f), Act of July 31, 1946, 60 Stat. 722, 724, 725)

SECTION 3797 (a) AND (b) OF THE INTERNAL REVENUE CODE

DEFINITIONS

(a) When used in this title (Internal Revenue Code) * * *

* * * * *

(2) *Partnership.* * * * The term "partnership" includes a syndicate, group, pool, joint venture, or other unincorporated organization, through or by means of which any business, financial operation, or venture is carried on, and which is not, within the meaning of this title, a trust or estate or a corporation * * *.

(3) *Corporation.* The term "corporation" includes associations, joint-stock companies, and insurance companies.

* * * * *

(10) *State.* The word "State" shall be construed to include the Territories and the District of Columbia, where such construction is necessary to carry out provisions of this title.

(11) *Secretary.* The term "Secretary" means the Secretary of the Treasury.

(12) *Commissioner.* The term "Commissioner" means the Commissioner of Internal Revenue.

(13) *Collector.* The term "collector" means collector of internal revenue.

(14) *Taxpayer.* The term "taxpayer" means any person subject to a tax imposed by this title.

* * * * *

(b) *Includes and including.* The terms "includes" and "including" when used in a definition contained in this title shall not be deemed to exclude other things otherwise within the meaning of the term defined.

§ 411.201 *General definitions and use of terms.* As used in the regulations in this part:

(a) The terms defined in the above provisions of law shall have the meanings so assigned to them.

(b) "Railroad Retirement Tax Act" means subchapter B of chapter 9 of the Internal Revenue Code, as amended.

(c) "Internal Revenue Code" means the act approved February 10, 1939 (53 Stat., Part 1), entitled "An act to consolidate and codify the internal revenue laws of the United States", as amended.

(d) "Act" means the Railroad Retirement Tax Act, as defined in this section.

(e) "Carriers Taxing Act of 1937" means the act approved June 29, 1937 (50 Stat. 435), as amended.

(f) "Railway Labor Act" means the act approved May 20, 1926 (44 Stat. 577), as amended.

(g) "Federal Insurance Contributions Act" means subchapter A of chapter 9 of the Internal Revenue Code, as amended.

(h) "Social Security Act" means the act approved August 14, 1935 (49 Stat. 620), as amended.

(i) "Railroad Retirement Act of 1937" means the act approved June 24, 1937 (50 Stat. 307), as amended.

(j) "Tax" means the employers' tax, the employees' tax, or the employee representatives' tax, as respectively defined in this section, or both the employers' tax and the employees' tax.

(k) "Employers' tax" means the tax imposed by section 1520 of the act with respect to compensation paid after December 31, 1948, for services rendered after December 31, 1946, except that (1) such term when used in Subparts F and I means the tax imposed by section 1520 of the act in force after December 31, 1946, with respect to compensation paid after December 31, 1948, for services rendered after December 31, 1936, and (2) such term when used in Subparts G and H means the tax imposed by section 1520 of the act in force before, on, or after January 1, 1947, with respect to compensation paid after March 31, 1939, for services rendered after December 31, 1936, or the tax imposed by section 3 of the Carriers Taxing Act of 1937 with respect to compensation paid before April 1, 1939, for services rendered after December 31, 1936.

(l) "Employees' tax" means the tax imposed by section 1500 of the act with respect to compensation paid after December 31, 1948, for services rendered after December 31, 1946, except that (1) such term when used in subparts F and I means the tax imposed by section 1500 of the act in force after December 31, 1946, with respect to compensation paid after December 31, 1948, for services rendered after December 31, 1946, or the tax imposed by section 1500 of the act in force before January 1, 1947, with respect to compensation paid after December 31, 1948, for services rendered after March 31, 1939, and before January 1, 1947, or the tax imposed by section 2 of the Carriers Taxing Act of 1937 with respect to compensation paid after December 31, 1948, for services rendered after December 31, 1936, and before April 1, 1939, and (2) such term when used in Subparts G and H means the tax imposed by section 1500 of the act in force before, on, or after January 1, 1947, with respect to compensation for services rendered after March 31, 1939, or the tax imposed by section 2 of the Carriers Taxing Act of 1937 with respect to compensation for services rendered after December 31, 1936, and before April 1, 1939.

(m) "Employee representatives' tax" means the tax imposed by section 1510 of the act with respect to compensation paid after December 31, 1948, for services rendered after December 31, 1946, except that such term when used in Subpart H means the tax imposed by section 1510 of the act in force before, on, or after January 1, 1947, with respect to compensation for services rendered after March 31, 1939, or the tax imposed by section 5 of the Carriers Taxing Act of 1937 with respect to compensation for services rendered after December 31, 1936, and before April 1, 1939.

(n) "Employee organization" means a railway labor organization which is not included as an employer under section 1532 (a) of the act.

(o) "Regulations 100" means the regulations approved October 12, 1937 (26 CFR, Part 410), as amended, relating to the employers' tax, employees' tax, and employee representatives' tax under the Carriers Taxing Act of 1937, and such regulations as made applicable to subchapter B of chapter 9 and other provisions of the Internal Revenue Code by Treasury Decision 4885, approved February 11, 1939 (26 CFR, Cum. Supp., p. 5876), together with any amendments to such regulations as so made applicable to the Internal Revenue Code.

(p) "Railroad Retirement Board" means the board established pursuant to section 10 of the Railroad Retirement Act of 1937.

(q) The cross-references in the regulations in this part to other portions of the regulations, when the word "see" is used, are made only for convenience, and shall be given no legal effect.

SECTION 1532 (a) OF THE ACT

EMPLOYER

The term "employer" means any carrier (as defined in subsection (h) of this section), and any company which is directly or indirectly owned or controlled by one or more such carriers or under common control therewith, and which operates any equipment or facility or performs any service (except trucking service, casual service, and the

casual operation of equipment or facilities) in connection with the transportation of passengers or property by railroad, or the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad, and any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the property or operating all or any part of the business of any such employer: *Provided, however*, That the term "employer" shall not include any street, interurban, or suburban electric railway, unless such railway is operating as a part of a general steam-railroad system of transportation, but shall not exclude any part of the general steam-railroad system of transportation now or hereafter operated by any other motive power. The Interstate Commerce Commission is hereby authorized and directed upon request of the Commissioner of Internal Revenue, or upon complaint of any party interested, to determine after hearing whether any line operated by electric power falls within the terms of this proviso. The term "employer" shall also include railroad associations, traffic associations, tariff bureaus, demurrage bureaus, weighing and inspection bureaus, collection agencies and other associations, bureaus, agencies or organizations controlled and maintained wholly or principally by two or more employers as hereinbefore defined and engaged in the performance of services in connection with or incidental to railroad transportation; and railway labor organizations, national in scope, which have been or may be organized in accordance with the provisions of the Railway Labor Act, as amended, and their State and National legislative committees and their general committees and their insurance departments and their local lodges and divisions, established pursuant to the constitution and bylaws of such organizations. The term "employer" shall not include any company by reason of its being engaged in the mining of coal, the supplying of coal to an employer where delivery is not beyond the mine tipple, and the operation of equipment or facilities therefor, or in any of such activities. (Sec. 1532 (a), I. R. C., as amended by sec. 1, Act of Aug. 13, 1940, 54 Stat. 785)

SECTION 1532 (h) OF THE ACT

CARRIER

The term "carrier" means an express company, sleeping-car company, or carrier by railroad, subject to part I of the Interstate Commerce Act.

§ 411.202 *Who are employers.* Each of the following persons is an employer within the meaning of the act:

(a) Any carrier, that is, any express company, sleeping-car company, or carrier by railroad, subject to part I of the Interstate Commerce Act;

(b) Any company:

(1) Which is directly or indirectly owned or controlled by one or more employers as defined in paragraph (a) of this section, or under common control therewith, and

(2) Which operates any equipment or facility or performs any service (except trucking service, casual service, and the casual operation of equipment or facilities) in connection with:

(i) The transportation of passengers or property by railroad, or

(ii) The receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad;

(c) Any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the property or operating all or any part of the business of any employer as defined in paragraph (a) or (b) of this section;

(d) Any railroad association, traffic association, tariff bureau, demurrage bureau, weighing and inspection bureau, collection agency, and any other association, bureau, agency, or organization controlled and maintained wholly or principally by two or more employers as defined in paragraph (a), (b), or (c) of this section and engaged in the performance of services in connection with or incidental to railroad transportation;

(e) Any railway labor organization, national in scope, which has been or may be organized in accordance with the provisions of the Railway Labor Act; and

(f) Any subordinate unit of a national railway - labor - organization employer, that is, any State or National legislative committee, general committee, insurance department, or local lodge or division, of an employer as defined in paragraph (e) of this section, established pursuant to the constitution and bylaws of such employer.

As used in paragraph (b) of this section, the term "controlled" includes direct or indirect control, whether legally enforceable and however exercisable or exercised. The control may be by means of stock ownership, or by agreements, licenses, or any other devices which insure that the operation of the company is in the interests of one or more carriers. It is the reality of the control, however, which is decisive, not its form nor the mode of its exercise.

The term "employer" does not include any street, interurban, or suburban electric railway, unless such railway is operating as a part of a general steam-railroad system of transportation, but shall not exclude any part of the general steam-railroad system of transportation which is operated by any other motive power.

The term "employer" does not include any company by reason of its being engaged in the mining of coal, the supplying of coal to an employer where delivery is not beyond the mine tipple, and the operation of equipment or facilities for such mining or supplying of coal, or in any of such activities.

SECTION 1532 (b) OF THE ACT

EMPLOYEE

The term "employee" means any individual in the service of one or more employers for compensation: *Provided, however*, That the term "employee" shall include an employee of a local lodge or division defined as an employer in subsection (a) only if he was in the service of or in the employment relation to a carrier on or after August 29, 1935. An individual shall be deemed to have been in the employment relation to a carrier on August 29, 1935, if (i) he was on that date on leave of absence from his employment, expressly granted to him by the carrier by whom he was employed, or by a duly authorized representative of such carrier, and the grant of such leave of absence will have been established to the satisfaction of the Railroad Retirement Board before July 1947; or (ii) he was in the service of a carrier after August 29, 1935, and before January 1946 in each of six calendar months, whether or not consecutive; or (iii) before August 29, 1935, he did not retire and was not retired or discharged from the service of the last carrier by whom he was employed or its corporate or operating successor, but (A) solely by reason of his physical or mental disability he ceased before August 29, 1935, to be in the service of such carrier and thereafter remained continuously disabled until he attained age sixty-five or until August 1945, or (B) solely for such last stated reason a carrier by whom he was employed before August 29, 1935, or a carrier who is its successor did not on or after August 29, 1935, and before August 1945 call him to return to service, or (C) if he was so called he was solely for such reason unable to render service in six calendar months as provided in clause (ii); or (iv) he was on August 29, 1935, absent from the service of a carrier by reason of a discharge which, within one year after the effective date thereof, was protested, to an appropriate labor representative or to the carrier, as wrongful, and which was followed within ten years of the effective date thereof by his reinstatement in good faith to his former service with all his seniority rights: *Provided*, That an individual shall not be deemed to have been on August 29, 1935, in the employment relation to a carrier if before that date he was granted a pension or gratuity on the basis of which a pension was awarded to him pursuant to section 6 of the Railroad Retirement Act of 1937, or if during the last pay-roll period before August 29, 1935, in which he rendered service to a carrier he was not in the service of an employer, in accordance with subsection (d), with respect to any service in such pay-roll period, or if he could have been in the employment relation to an employer only by reason of his having been, either before or after August 29, 1935, in the service of a local lodge or division defined as an employer in subsection (a).

The term "employee" includes an officer of an employer.

The term "employee" shall not include any individual while such individual is engaged in the physical operations consisting of the mining of coal, the preparation of coal, the handling (other than movement by rail with standard railroad locomotives) of coal not beyond the mine tipple, or the loading of coal at the tipple. (Sec. 1532 (b), I. R. C., as amended by sec. 3 (e), Act of July 31, 1946, 60 Stat. 724)

SECTION 1532 (d) OF THE ACT

SERVICE

An individual is in the service of an employer whether his service is rendered within or without the United States if (i) he is subject to the continuing authority of the employer to supervise and direct the manner of rendition of his service, or he is rendering professional or technical services and is integrated into the staff of the employer, or he is rendering, on the property used in the employer's operations, other personal services the rendition of which is integrated into the employer's operations, and (ii) he renders such service for compensation: *Provided, however*, That an individual shall be deemed to be in the service of an employer, other than a local lodge or division or a general committee of a railway-labor-organization employer, not conducting the principal part of its business in the United States only when he is rendering service to it in the United States; and an individual shall be deemed to be in the service of such a local lodge or division only if (1) all, or substantially all, the individuals constituting its membership are employees of an employer conducting the principal part of its business in the United States; or (2) the headquarters of such local lodge or division is located in the United States; and an individual shall be deemed to be in the service of such a general committee only if (1) he is representing a local lodge or division described in clauses (1) or (2) immediately above; or (2) all, or substantially all, the individuals represented by it are employees

of an employer conducting the principal part of its business in the United States; or (3) he acts in the capacity of a general chairman or an assistant general chairman of a general committee which represents individuals rendering service in the United States to an employer, but in such case if his office or headquarters is not located in the United States and the individuals represented by such general committee are employees of an employer not conducting the principal part of its business in the United States, only such proportion of the remuneration for such service shall be regarded as compensation as the proportion which the mileage in the United States under the jurisdiction of such general committee bears to the total mileage under its jurisdiction, unless such mileage formula is inapplicable, in which case such other formula as the Railroad Retirement Board may have prescribed pursuant to subsection (c) of section 1 of the Railroad Retirement Act of 1937 shall be applicable, and if the application of such mileage formula, or such other formula as the Board may prescribe, would result in the compensation of the individual being less than 10 per centum of his remuneration for such service no part of such remuneration shall be regarded as compensation: *Provided further,* That an individual not a citizen or resident of the United States shall not be deemed to be in the service of an employer when rendering service outside the United States to an employer who is required under the laws applicable in the place where the service is rendered to employ therein, in whole or in part, citizens or residents thereof; and the laws applicable on August 29, 1935, in the place where the service is rendered shall be deemed to have been applicable there at all times prior to that date. (Sec. 1532 (d), I. R. C., as amended by sec. 3, Act of June 11, 1940, 54 Stat. 264; sec. 14, Act of Apr. 8, 1942, 56 Stat. 209; sec. 1, Act of July 31, 1946, 60 Stat. 722)

SECTION 1532 (h) OF THE ACT

CARRIER

The term "carrier" means an express company, sleeping-car company, or carrier by railroad, subject to part I of the Interstate Commerce Act.

§ 411.203 *Who are employees*—(a) *In general.* Within the meaning of the act, any individual is an employee if he is in the service of one or more employers (as defined in section 1532 (a)) for compensation. An individual is in the service of an employer, with respect to services rendered for compensation, if:

(1) He is subject to the continuing authority of the employer to supervise and direct the manner in which he renders such services; or

(2) He is rendering professional or technical services and is integrated into the staff of the employer; or

(3) He is rendering, on the property used in the employer's operations, other personal services the rendition of which is integrated into the employer's operations.

In order that an individual may be in the service of an employer within the meaning of subparagraph (1) of this paragraph, it is not necessary that the employer actually direct or control the manner in which the services are rendered; it is sufficient if the employer has the right to do so. The right of an employer to discharge an individual is also an important factor indicating that the individual is subject to the continuing authority of the employer to supervise and direct the manner of rendition of the services. Other factors indicating that an individual is subject to the continuing authority of the employer to supervise and direct the manner of rendition of the services are the furnishing of tools and the furnishing of a place to work by the employer to the individual who renders the services.

In general, if an individual is subject to the control or direction of an employer merely as to the result to be accomplished by the work and not as to the means and methods for accomplishing the result, he is an independent contractor. An individual performing services as an independent contractor is not, as to such services, in the service of an employer within the meaning of subparagraph (1) of this paragraph. However, an individual performing services as an independent contractor may be, as to such services, in the service of an employer within the meaning of subparagraph (2) or (3) of this paragraph.

Whether or not an individual is an employee will be determined upon an examination of the particular facts of the case.

If an individual is an employee, it is of no consequence that he is designated as a partner, coadventurer, agent, independent contractor, or otherwise, or that he performs services on a part-time basis. The age of the individual, or the measurement, method, or designation of the remuneration, is immaterial, if he is in fact an employee.

The act makes no distinction between classes or grades of employees. Thus, superintendents, managers, and other superior employees are employees within the meaning of the act. An officer of an employer is an employee, but a director as such is not. A director may be an employee, however, if he performs services other than those required by attendance at and participation in meetings of the board of directors.

In determining whether an individual is an employee with respect to services rendered within the United States, the citizenship or residence of the individual, or the place where the contract of service was entered into, is immaterial.

If an individual performs services for an employer (other than a local lodge or division or a general committee of a railway-labor-organization employer) which does not conduct the principal part of its business within the United States, such individual shall be deemed to be in the service of such employer only to the extent that he performs services for it in the United States. Thus, with respect to services rendered for such employer outside the United States, such individual is not in the service of an employer.

If an individual performs services for an employer (other than a local lodge or division or a general committee of a railway-labor-organization employer) which conducts the principal part of its business within the United States, he is in the service of such employer whether his services are rendered within or without the United States. In the case of an individual, not a citizen or resident of the United States, rendering services in a place outside the United States to an employer which is required under the laws applicable in such place to employ, in whole or in part, citizens or residents thereof, such individual shall not be deemed to be in the service of an employer with respect to services so rendered.

The term "employee" does not include any individual while he is engaged in the physical operations consisting of the mining of coal, the preparation of coal, the handling (other than movement by rail with standard railroad locomotives) of coal not beyond the mine tipple, or the loading of coal at the tipple.

(b) *Employees of local lodges or divisions of railway-labor-organization employers.* (1) An individual is in the service of a local lodge or division of a railway-labor-organization employer (see § 411.202 (f)) only if:

(i) All, or substantially all, the individuals constituting the membership of such local lodge or division are employees of an employer conducting the principal part of its business in the United States; or

(ii) The headquarters of such local lodge or division is located in the United States.

(2) An individual in the service of a local lodge or division is not an employee within the meaning of the act unless he was, on or after August 29, 1935, in the service of a carrier (see paragraph (a) of this section) or he was, on August 29, 1935, in the "employment relation" to a carrier.

An individual shall be deemed to have been in the employment relation to a carrier on August 29, 1935, if (i) he was on that date on leave of absence from his employment, expressly granted to him by the carrier by whom he was employed, or by a duly authorized representative of such carrier, and the grant of such leave of absence will have been established to the satisfaction of the Railroad Retirement Board before July 1947; or (ii) he was in the service of a carrier after August 29, 1935, and before January 1946 in each of six calendar months, whether or not consecutive; or (iii) before August 29, 1935, he did not retire and was not retired or discharged from the service of the last carrier by whom he was employed or its corporate or operating successor, but (*a*) solely by reason of his physical or mental disability he ceased before August 29, 1935, to be in the service of such carrier and thereafter remained continuously disabled until he attained age sixty-five or until August 1945, or (*b*) solely for such last stated reason a carrier by whom he was employed before August 29, 1935, or a carrier who is its sucessor did not on or after August 29, 1935, and before August 1945 call him to return to service, or (*c*) if he was so called he was solely for such reason unable to render service in six calendar months as provided in subdivision (ii); or (iv) he was on August 29, 1935, absent from the service of a carrier by reason of a discharge which, within one year after the effective date thereof, was protested, to an appropriate labor representative or to the carrier, as wrongful, and which was followed within 10 years of the effective date thereof by his reinstatement in good faith to his former service with all his seniority

rights. However, an individual shall not be deemed to have been in the employment relation to a carrier on August 29, 1935, if before that date he was granted a pension or gratuity on the basis of which a pension was awarded to him pursuant to section 6 of the Railroad Retirement Act of 1937, or if during the last pay-roll period before August 29, 1935, in which he rendered service to a carrier he was not, with respect to any service in such pay-roll period, in the service of an employer (see paragraph (a) of this section).

(For definition of carrier, see § 411.202 (a)).

(c) *Employees of general committees of railway-labor-organization employers.* An individual is in the service of a general committee of a railway-labor-organization employer (see § 411.202 (f)) only if:

(1) He is representing a local lodge or division described in paragraph (b) (1) of this section; or

(2) All, or substantially all, the individuals represented by such general committee are employees of an employer conducting the principal part of its business in the United States; or

(3) He acts in the capacity of a general chairman or an assistant general chairman of a general committee which represents individuals rendering service in the United States to an employer. In such case, if his office or headquarters is not located in the United States and the individuals represented by such general committee are employees of an employer not conducting the principal part of its business in the United States, only a part of his remuneration for such service shall be regarded as compensation. The part of his remuneration regarded as compensation shall be in the same proportion to his total remuneration as the mileage in the United States under the jurisdiction of such general committee bears to the total mileage under its jurisdiction, unless such mileage formula is inapplicable, in which case such other formula as the Railroad Retirement Board may have prescribed pursuant to section 1 (c) of the Railroad Retirement Act of 1937 shall be applicable. However, no part of his remuneration for such service shall be regarded as compensation if the application of such mileage formula, or such other formula as the Railroad Retirement Board may have prescribed, would result in his compensation for the service being less than 10 percent of his remuneration for such service.

SECTION 1532 (c) OF THE ACT

EMPLOYEES REPRESENTATIVE

The term "employee representative" means any officer or official representative of a railway labor organization other than a labor organization included in the term "employer" as defined in subsection (a), who before or after June 29, 1937, was in the service of an employer as defined in subsection (a) and who is duly authorized and designated to represent employees in accordance with the Railway Labor Act, 44 Stat. 577 (U. S. C., Title 45, c. 18), as amended, and any individual who is regularly assigned to or regularly employed by such officer or official representative in connection with the duties of his office.

§ 411.204 *Who are employee representatives.* An employee representative within the meaning of the act is:

(a) Any officer or official representative of a railway labor organization which is not included as an employer under section 1532 (a) of the act who:

(1) Was in the service of an employer either before or after June 29, 1937, and

(2) Is duly authorized and designated to represent employees in accordance with the Railway Labor Act.

(For railway labor organizations which are employers under section 1532 (a) of the act, see § 411.202 (e) and (f).)

(b) Any individual who is regularly assigned to or regularly employed by an employee representative as defined in paragraph (a) of this section, in connection with the duties of such employee representative's office.

In determining whether an individual is an employee representative, his citizenship or residence is material only insofar as those factors may affect the determination of whether he was "in the service of an employer" (see § 411.203 (a)). The age of the individual is immaterial.

SECTION 1532 (e) OF THE ACT

COMPENSATION

The term "compensation" means any form of money remuneration earned by an individual for services rendered as an employee to one or more employers, or as an employee representative, including remuneration paid for time lost as an employee, but remuneration paid for time lost shall be deemed earned in the month in which such time is lost. Such term does not include tips, or the voluntary payment by an employer, without deduction from the remuneration of the employee, of the tax imposed on such employee by section 1500. Compensation which is earned during the period for which the Commissioner shall require a return of taxes under this subchapter to be made and which is payable during the calendar month following such period shall be deemed to have been paid during such period only. For the purpose of determining the amount of taxes under sections 1500 and 1520, compensation earned in the service of a local lodge or division of a railway-labor-organization employer shall be disregarded with respect to any calendar month if the amount thereof is less than $3 and * * * such compensation is earned after March 31, 1940.

A payment made by an employer to an individual through the employer's pay roll shall be presumed, in the absence of evidence to the contrary, to be compensation for service rendered by such individual as an employee of the employer in the period with respect to which the payment is made. An employee shall be deemed to be paid, "for time lost" the amount he is paid by an employer with respect to an identifiable period of absence from the active service of the employer, including absence on account of personal injury, and the amount he is paid by the employer for loss of earnings resulting from his displacement to a less remunerative position or occupation. If a payment is made by an employer with respect to a personal injury and includes pay for time lost, the total payment shall be deemed to be paid for time lost unless, at the time of payment, a part of such payment is specifically apportioned to factors other than time lost, in which event only such part of the payment as is not so apportioned shall be deemed to be paid for time lost. (Sec. 1532 (e), I. R. C., as amended by sec. 27 (a), Act of Oct. 10, 1940, 54 Stat. 1101; sec. 3 (f), Act of July 31, 1946, 60 Stat. 725)

SECTION 1511 OF THE ACT

DETERMINATION OF COMPENSATION

The compensation of an employee representative for the purpose of ascertaining the tax thereon shall be determined in the same manner and with the same effect as if the employee organization by which such employee representative is employed were an employer as defined in section 1532 (a).

§ 411.205 *Definition of compensation.* The term "compensation" means all remuneration in money, or in something which may be used in lieu of money (for example, scrip and merchandise orders), which is earned by an individual for services rendered as an employee to one or more employers or as an employee representative. A payment made by an employer to an individual through the employer's pay roll shall be presumed, in the absence of evidence to the contrary, to be compensation for services rendered by such individual as an employee of the employer. Likewise, a payment made by an employee organization to an employee representative through the organization's pay roll shall be presumed, in the absence of evidence to the contrary, to be compensation for services rendered by the employee representative as such.

The term "compensation" is not confined to amounts earned or paid for active service, but includes amounts earned or paid for an identifiable period during which the employee is absent from the active service of the employer and, in the case of an employee representative, amounts earned or paid for an identifiable period during which the employee representative is absent from the active service of the employee organization.

The term "compensation" does not include tips, or the voluntary payment by an employer of the employees' tax without the deduction of such tax from the remuneration of the employee.

(See § 411.207, relating to when compensation is earned. See also §§ 411.301, 411.401, and 411.501, relating to the amount of compensation included for the purpose of determining the employees' tax, the employers' tax, and the employee representatives' tax, respectively. For special provisions relating to the compensation of certain general chairmen or assistant general chairmen of a general committee of a railway-labor-organization employer, see § 411.203 (c).)

§ 411.206 *Items included as compensation.* The following items are included in compensation with respect to employees and in analogous situations with respect to employee representatives:

(a) Salaries, wages, commissions, fees, bonuses, and any other remuneration in money or in something which may be used in lieu of money. The name by which remuneration is designated, the amount, and the basis upon which it is paid are immaterial. It may be paid upon the basis of piece work, a percentage of profits, or on a daily, hourly, weekly, monthly, annual, or other basis.

(b) Sick pay, vacation allowances, or back pay upon reinstatement after wrongful discharge.

(c) Amounts paid to an employee for an identifiable period of absence from

the active service of the employer on account of personal injury. If a payment is made to an employee with respect to a personal injury and includes pay for an identifiable period of absence from active service, the total payment shall be deemed to be paid for such period of absence from active service unless, at the time of payment, a part of such payment is specifically apportioned to factors other than absence from active service, in which event only such part of the payment as is not so apportioned shall be deemed to be paid for such period of absence from active service.

(d) Amounts paid to an employee for loss of earnings during an identifiable period as the result of the displacement of the employee to a less remunerative position or occupation.

(e) Amounts paid as allowance or reimbursement for traveling or other expenses incurred in the business of the employer to the extent of the excess of such amounts, if any, over such expenses actually incurred and accounted for by the employee to the employer.

(f) Generally, premiums paid by an employer on a policy of life insurance covering the life of an employee, if the employer is not a beneficiary under the policy. However, premiums paid by an employer on policies of group life insurance covering the lives of his employees are not compensation, if the employee has no option to take the amount of the premiums instead of accepting the insurance and has no equity in the policy (such as the right of assignment or the right to the surrender value on termination of his employment).

(g) Amounts deducted from the compensation of an employee, including the amount of the employees' tax deducted pursuant to section 1501, constitute compensation paid to the employee.

(h) Payments made by an employer into a stock bonus, pension, or profit-sharing fund, if such payments inure to the exclusive benefit of the employee and may be withdrawn by the employee at any time, or upon resignation or dismissal, or if the contract for services requires such payment as part of the remuneration. Whether or not under other circumstances such payments constitute compensation depends upon the particular facts of each case.

§ 411.207 *Compensation; when earned.* Compensation is earned when an employee, or employee representative, as such, performs services for which he is paid or for which there is a present or future obligation to pay, regardless of the time at which payment is made or is to be made. Remuneration paid for any period of absence from active service shall be deemed to have been earned in the month in which such absence from service occurred. A payment made by an employer or employee organization to an individual through the pay roll of the employer or employee organization for a period commencing after December 31, 1946, shall be presumed, in the absence of evidence to the contrary, to be for services rendered by such individual in the period covered by the pay roll and, thus, to have been earned in such period. (See §§ 411.205 and 411.206.)

§ 411.208 *Compensation; when paid.* Compensation is deemed to be paid:

(a) When it is actually paid; or

(b) When it is constructively paid, that is, credited to the account of or set apart for an employee without any substantial limitation or restriction as to the time or manner of payment or condition upon which payment is to be made, and made available to him so that it may be drawn upon at any time and its payment brought within his own control and disposition; or

(c) Within the period for which a return of tax is required to be made, if the compensation was earned during such period and is payable during the calendar month following such period. (See § 411.601, relating to periods for which a return of tax is required, and § 411.207, relating to when compensation is earned.)

Example (1). During September 1950 (which falls in a period for which a return of tax is required to be made), A is employed by employer X at a monthly salary of $200, one-half of which is payable on the 25th of the month in which the services are performed and the other half on the 10th of the following month. Thus on October 10, A is paid $100 which was earned during September. That $100 is deemed to have been paid to A in September and should be included in X's return for the quarter July, August, and September.

Example (2). During September 1949 (which falls in a period for which a return of tax is required to be made), A is employed by employer X on the basis of a 6-day week at a weekly salary of $60 payable on Saturday of each week. Thus on Saturday, October 1, 1949, A is paid $60 for services performed during the week September 26, 1949, to October 1, 1949, inclusive. In such case five-sixths of that amount or $50 is deemed to have been paid in September and should be included in X's return filed for the period in which September falls. The balance of A's salary for that week ($10) should be included in the return filed for the period in which October 1949 falls. (But see § 411.601 (b), relating to period covered by return where employer pays on a weekly basis.)

SUBPART C—EMPLOYEES' TAX

SECTION 1500 OF THE ACT

RATE OF TAX

In addition to other taxes, there shall be levied, collected, and paid upon the income of every employee a tax equal to the following percentages of so much of the compensation, paid to such employee after December 31, 1946, for services rendered by him after such date, as is not in excess of $300 for any calendar month:

1. With respect to compensation paid during the calendar years 1947 and 1948, the rate shall be 5¾ per centum;

2. With respect to compensation paid during the calendar years 1949, 1950, and 1951, the rate shall be 6 per centum;

3. With respect to compensation paid after December 31, 1951, the rate shall be 6¼ per centum. (Sec. 1500, I. R. C., as amended by sec. 3 (a), Act of July 31, 1946, 60 Stat. 723.)

SECTION 1532 (e) OF THE ACT

COMPENSATION

* * * For the purpose of determining the amount of taxes under sections 1500 * * *, compensation earned in the service of a local lodge or division of a railway-labor-organization employer shall be disregarded with respect to any calendar month if the amount thereof is less than $3 and * * * such compensation is earned after March 31, 1940.

* * * * *

(Sec. 1532 (e), I. R. C., as amended by sec. 27 (a), Act of Oct. 10, 1940, 54 Stat. 1101)

§ 411.301 *Measure of employees' tax*—(a) *General rule.* Except as provided in paragraph (b) of this section, the employees' tax with respect to compensation paid after December 31, 1948, for services rendered after December 31, 1946, is measured by the amount of such compensation paid to an individual for services rendered as an employee to one or more employers, excluding, however, the amount of compensation in excess of $300 which is paid after December 31, 1946, to the employee for services rendered during any one calendar month after 1946. (See §§ 411.205 to 411.208, relating to compensation.)

(b) *Exception; employee of local lodge or division of railway-labor-organization employer.* If the amount of compensation earned in any calendar month by an individual as an employee in the service of a local lodge or division of a railway-labor-organization employer is less than $3, such amount shall be disregarded for the purpose of determining the employees' tax.

§ 411.302 *Rates and computation of employees' tax.* The rates of employees' tax applicable for the respective calendar years are as follows:

	Percent
Compensation paid during the calendar years 1949, 1950, 1951	6
Compensation paid during the calendar year 1952 and subsequent calendar years	6¼

The employees' tax is computed by applying to the amount of the employee's compensation with respect to which the employees' tax is imposed the rate for the calendar year in which the compensation is paid.

SECTION 1501 (a) OF THE ACT

DEDUCTION OF TAX FROM COMPENSATION

Requirement. The tax imposed by section 1500 shall be collected by the employer of the taxpayer by deducting the amount of the tax from the compensation of the employee as and when paid. If an employee is paid compensation after December 31, 1946, by more than one employer for services rendered during any calendar month after 1946 and the aggregate of such compensation is in excess of $300, the tax to be deducted by each employer other than a subordinate unit of a national railway-labor-organization employer from the compensation paid by him to the employee with respect to such month shall be that proportion of the tax with respect to such compensation paid by all such employers which the compensation paid by him after December 31, 1946, to the employee for services rendered during such month bears to the total compensation paid by all such employers after December 31, 1946, to such employee for services rendered during such month; and in the event that the compensation so paid by such employers to the employee for services rendered during such month is less than $300, each subordinate unit of a national railway-labor-organization employer shall deduct such proportion of any additional tax as the compensation paid by such employer after December 31, 1946, to such employee for services rendered during such month bears to the total compensation paid by all such employers after December 31, 1946, to such employee for services ren-

dered during such month. (Sec. 1501 (a), I. R. C., as amended by sec. 3 (b), Act of July 31, 1946, 60 Stat. 723)

SECTION 3661 OF THE INTERNAL REVENUE CODE

ENFORCEMENT OF LIABILITY FOR TAXES COLLECTED

Whenever any person is required to collect or withhold any internal-revenue tax from any other person and to pay such tax over to the United States, the amount of tax so collected or withheld shall be held to be a special fund in trust for the United States. The amount of such fund shall be assessed, collected, and paid in the same manner and subject to the same provisions and limitations (including penalties) as are applicable with respect to the taxes from which such fund arose.

§ 411.303 *Collection of, and liability for, employees' tax*—(a) *Collection; general rule.* The employer shall collect from each of his employees the employees' tax imposed with respect to the compensation of the employee by deducting or causing to be deducted the amount of such tax from the compensation subject to the tax as and when such compensation is paid. (As to the measure of the employees' tax, see §411.301.)

(b) *Collection; aggregate monthly compensation in excess of $300 paid by two or more employers.* If an employee is paid compensation after December 31, 1946, by two or more employers for services rendered during any one calendar month after 1946, and if the aggregate compensation paid to such employee after December 31, 1946, by all employers for services rendered during such month is in excess of $300, the employees' tax to be deducted by each employer from the compensation as and when paid by him to the employee shall be determined as follows:

(1) If such compensation is paid by two or more employers, none of whom is a subordinate unit of a national railway-labor-organization employer (see § 411.202 (f)), each employer shall deduct the employees' tax with respect to that proportion of $300 of compensation which the compensation paid after December 31, 1946, by such employer to the employee for the month bears to the total compensation paid after December 31, 1946, to such employee by all employers for that month (see example (1), below);

(2) If such compensation is paid by two or more employers, each of which is a subordinate unit of a national railway-labor-organization employer, each subordinate unit shall deduct the employees' tax with respect to that proportion of $300 of compensation which the compensation paid after December 31, 1946, by such subordinate unit to the employee for the month bears to the total compensation paid after December 31, 1946, to such employee by all such subordinate units for that month;

(3) If such compensation is paid by two or more employers, only one of whom is an employer other than a subordinate unit of a national railway-labor-organization employer, and if the compensation paid after December 31, 1946, to the employee by the employer other than a subordinate unit equals or exceeds $300 for the month, then no employees' tax shall be deducted by any such subordinate unit from the compensation paid by it after December 31, 1946, to such employee for that month, and the employer other than a subordinate unit shall deduct the employees' tax with respect to $300 of compensation paid by him after December 31, 1946, to such employee for that month (see example (2), below);

(4) If such compensation is paid by two or more employers other than a subordinate unit of a national railway-labor-organization employer and by one or more subordinate units of a national railway - labor - organization employer, and if the total compensation paid after December 31, 1946, to the employee by the employers other than a subordinate unit equals or exceeds $300 for the month, then no employees' tax shall be deducted by any such subordinate unit from the compensation paid by it after December 31, 1946, to such employee for that month, and each employer other than a subordinate unit shall deduct the employees' tax with respect to that proportion of $300 of compensation which the compensation paid after December 31, 1946, by such employer to the employee for the month bears to the total compensation paid after December 31, 1946, by such employers other than a subordinate unit for that month (see example (3), below);

(5) If such compensation is paid by two or more employers, only one of whom is a subordinate unit of a national railway-labor-organization employer, and if the total compensation paid after December 31, 1946, to the employee by all employers other than the subordinate unit is less than $300 for the month, then each employer other than the subordinate unit shall deduct the employees' tax with respect to the full amount of compensation paid by him after December 31, 1946, to such employee for that month, and the subordinate unit of a national railway - labor - organization employer shall deduct the employees' tax with respect to the remainder of $300 of compensation less the total compensation paid after December 31, 1946, to such employee for that month by all other employers (see example (4), below); or

(6) If such compensation is paid by one or more employers other than a subordinate unit of a national railway-labor-organization employer and by two or more subordinate units of a national railway - labor - organization employer, and if the total compensation paid after December 31, 1946, to the employee by all employers other than the subordinate units is less than $300 for the month, then each employer other than the subordinate units shall deduct the employees' tax with respect to the full amount of compensation paid by him after December 31, 1946, to such employee for that month, and each subordinate unit of a national railway-labor-organization employer shall deduct the employees' tax with respect to that proportion of the remainder of $300 of compensation less the total compensation paid after December 31, 1946, to such employee for the month by all employers other than the subordinate units which the compensation paid after December 31, 1946, by such subordinate unit to the employee for that month bears to the total compensation paid after December 31, 1946, to such employee by all such subordinate units for that month (see example (5), below).

(See § 411.301 (b), which provides that for the purpose of determining the employees' tax certain nominal compensation earned by an employee of a local lodge or division of a railway-labor-organization employer shall be disregarded.)

The application of certain of the foregoing principles may be illustrated by the following examples:

Example (1). A, an employee, renders services during January 1949 for employers X, Y, and Z, none of whom is a subordinate unit of a national railway-labor-organization employer. For such services A is paid in the month or thereafter compensation of $100 by X, $100 by Y, and $200 by Z, or an aggregate of $400 for the month. In such case X pays one-fourth of A's aggregate compensation for the month, Y pays one-fourth, and Z pays one-half. X and Y, therefore, are each required to deduct the employees' tax with respect to one-fourth of $300, or $75, and Z is required to deduct the employees' tax with respect to one-half of $300, or $150.

Example (2). A, an employee, renders services during January 1949 for employer X, an employer other than a subordinate unit of a national railway-labor-organization employer, and for employers Y and Z, each of which is a subordinate unit of a national railway-labor-organization employer. For such services A is paid in the month or thereafter compensation of $300 by X, $50 by Y, and $25 by Z. Since the compensation paid A for the month by X equals $300, neither Y nor Z is required to deduct any employees' tax from the compensation paid by them to A for the month; and X is required to deduct the employees' tax with respect to the full $300 paid by him to A for the month.

Example (3). A, an employee, renders services during January 1949 for employers W and X, each of whom is an employer other than a subordinate unit of a national railway-labor-organization employer, and for employers Y and Z, each of which is a subordinate unit of a national railway-labor-organization employer. For such services A is paid in the month or thereafter compensation of $200 by W and $200 by X, or an aggregate of $400 for the month, and compensation of $50 by Y and $50 by Z. Since the aggregate compensation paid A for the month by W and X is in excess of $300, neither Y nor Z is required to deduct any employees' tax from the compensation paid by them to A for the month. Of the aggregate compensation of $400 paid A for the month by W and X, W pays one-half and X pays one-half. W and X, therefore, are each required to deduct the employees' tax with respect to one-half of $300, or $150.

Example (4). A, an employee, renders services during January 1949 for employer X, an employer other than a subordinate unit of a national railway-labor-organization employer, and for employer Y, a subordinate unit of a national railway-labor-organization employer. For such services A is paid in the month or thereafter compensation of $250 by X and $100 by Y. In such case X is required to deduct the employees' tax with respect to the full $250 paid by him to A for the month; and Y is required to deduct the employees' tax only with respect to $50 ($300 minus $250 paid by X).

Example (5). A, an employee, renders services during January 1949 for employers W and X, each of whom is an employer other than a subordinate unit of a national railway-labor-organization employer, and for

employers Y and Z, each of which is a subordinate unit of a national railway-labor-organization employer. For such services A is paid in the month or thereafter compensation of $140 by W, $100 by X, $50 by Y, and $100 by Z. In such case W and X are each required to deduct the employees' tax with respect to the full amount paid by them to A for the month, that is, W with respect to $140 and X with respect to $100; and Y and Z are each required to deduct the employees' tax with respect to their proportionate share of $60 ($300 minus $240 paid by W and X). Of the aggregate compensation of $150 paid by Y and Z, $50, or one-third, was paid by Y, and $100, or two-thirds, was paid by Z. In such case Y is required to deduct the employees' tax with respect to one-third of $60, or $20, and Z is required to deduct the employees' tax with respect to two-thirds of $60, or $40.

(c) *Undercollections or overcollections.* Any undercollection or overcollection of employees' tax resulting from the employer's inability to determine, at the time compensation is paid, the correct amount of compensation with respect to which the deduction should be made shall be corrected in accordance with the provisions of §§ 411.701 and 411.702, relating to adjustments of employees' tax, and Subpart H, relating to refunds, credits, and abatements.

(d) *When fractional part of cent may be disregarded.* In collecting the employees' tax, the employer shall disregard any fractional part of a cent of such tax unless it amounts to one-half cent or more, in which case it shall be increased to 1 cent.

(e) *Employer's liability.* The employer is liable for the employees' tax with respect to compensation paid by him, whether or not collected from the employee. If the employer deducts less than the correct amount of employees' tax or fails to deduct any part of the tax, he is nevertheless liable for the correct amount of the tax. Until collected from him, the employee is also liable for the employees' tax. Any employees' tax collected by or on behalf of an employer is a special fund in trust for the United States. An employer is not liable to any person for the amount of the employees' tax deducted by him and paid to the collector.

Section 2707 of the Internal Revenue Code, provides severe penalties for a willful failure to pay, collect, or truthfully account for and pay over, the employees' tax or for a willful attempt in any manner to evade or defeat the tax. Such penalties may be incurred by any person, including the employer, and any officer or employee of a corporate employer, or member or employee of any other employer, who as such employer, officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.

SUBPART D—EMPLOYERS' TAX

SECTION 1520 OF THE ACT

RATE OF TAX

In addition to other taxes, every employer shall pay an excise tax, with respect to having individuals in his employ, equal to the following percentages of so much of the compensation, paid by such employer after December 31, 1946, for services rendered to him after December 31, 1936, as is, with respect to any employee for any calendar month, not in excess of $300: *Provided, however,* That if an employee is paid compensation after December 31, 1946, by more than one employer for services rendered during any calendar month after 1936, the tax imposed by this section shall apply to not more than $300 of the aggregate compensation paid to such employee by all such employers after December 31, 1946, for services rendered during such month, and each employer other than a subordinate unit of a national railway-labor-organization employer shall be liable for that proportion of the tax with respect to such compensation paid by all such employers which the compensation paid by him after December 31, 1946, to the employee for services rendered during such month bears to the total compensation paid by all such employers after December 31, 1946, to such employee for services rendered during such month; and in the event that the compensation so paid by such employers to the employee for services rendered during such month is less than $300, each subordinate unit of a national railway-labor-organization employer shall be liable for such proportion of any additional tax as the compensation paid by such employer after December 31, 1946, to such employee for services rendered during such month bears to the total compensation paid by all such employers after December 31, 1946, to such employee for services rendered during such month:

1. With respect to compensation paid during the calendar years 1947 and 1948, the rate shall be 5¾ per centum;
2. With respect to compensation paid during the calendar years 1949, 1950, and 1951, the rate shall be 6 per centum;
3. With respect to compensation paid after December 31, 1951, the rate shall be 6¼ per centum. (See 1520, I. R. C., as amended by sec. 3 (d), Act of July 31, 1946, 60 Stat. 724)

SECTION 1532 (e) OF THE ACT

COMPENSATION

* * * For the purpose of determining the amount of taxes under sections * * * 1520, compensation earned in the service of a local lodge or division of a railway-labor-organization employer shall be disregarded with respect to any calendar month if the amount thereof is less than $3 and * * * such compensation is earned after March 31, 1940.

* * * * *

(Sec. 1532 (e), I. R. C., as amended by sec. 27 (a), Act of Oct. 10, 1940, 54 Stat. 1101)

§ 411.401 *Measure of employers' tax—*(a) *General rule.* Except as provided in paragraphs (b) and (c) of this section, the employers' tax with respect to compensation paid after December 31, 1948, for services rendered after December 31, 1946, is measured by the amount of such compensation paid by an employer to his employees, excluding, however, the amount of compensation in excess of $300 which is paid after December 31, 1946, by the employer to any employee for services rendered during any one calendar month after 1946. (See §§ 411.205 to 411.208, relating to compensation.)

(b) *Aggregate monthly compensation in excess of $300 paid by two or more employers.* If an employee is paid compensation after December 31, 1946, by two or more employers for services rendered during any one calendar month after 1946, and if the aggregate compensation paid to such employee after December 31, 1946, by all employers for services rendered during such month is in excess of $300, the measure of the employers' tax of each employer with respect to the compensation paid by him after December 31, 1946, to the employee for the month shall be determined as follows:

(1) If such compensation is paid by two or more employers, none of whom is a subordinate unit of a national railway-labor-organization employer (see § 411.202 (f)), the measure of the employers' tax of each employer shall be that proportion of $300 which the compensation paid after December 31, 1946, by such employer to the employee for the month bears to the total compensation paid after December 31, 1946, to such employee by all employers for that month;

(2) If such compensation is paid by two or more employers, each of which is a subordinate unit of a national railway-labor-organization employer, the measure of the employers' tax of each subordinate unit shall be that proportion of $300 which the compensation paid after December 31, 1946, by such subordinate unit to the employee for the month bears to the total compensation paid after December 31, 1946, to such employee by all such subordinate units for that month;

(3) If such compensation is paid by two or more employers, only one of whom is an employer other than a subordinate unit of a national railway-labor-organization employer, and if the compensation paid after December 31, 1946, to the employee by the employer other than a subordinate unit equals or exceeds $300 for the month, then no subordinate unit shall be liable for any employers' tax with respect to the compensation paid by it after December 31, 1946, to such employee for that month, and the measure of the employers' tax of the employer other than a subordinate unit with respect to the compensation paid by him after December 31, 1946, to such employee for that month shall be $300;

(4) If such compensation is paid by two or more employers other than a subordinate unit of a national railway-labor-organization employer and by one or more subordinate units of a national railway-labor-organization employer, and if the total compensation paid after December 31, 1946, to the employee by the employers other than a subordinate unit equals or exceeds $300 for the month, then no subordinate unit shall be liable for any employers' tax with respect to the compensation paid by it after December 31, 1946, to such employee for that month, and the measure of the employers' tax of each employer other than a subordinate unit shall be that proportion of $300 which the compensation paid after December 31, 1946, by such employer to the employee for the month bears to the total compensation paid after December 31, 1946, to such employee by all such employers other than a subordinate unit for that month;

(5) If such compensation is paid by two or more employers, only one of whom is a subordinate unit of a national railway-labor-organization employer, and if the total compensation paid after December 31, 1946, to the employee by all employers other than the subordinate unit is less than $300 for the month, then the measure of the employers' tax of each employer other than the subordinate unit shall be the full amount of compensation

paid by him after December 31, 1946, to such employee for that month, and the measure of the employers' tax of the subordinate unit of a national railway-labor-organization employer shall be the remainder of $300 less the total compensation paid after December 31, 1946, to such employee for that month by all other employers; or

(6) If such compensation is paid by one or more employers other than a subordinate unit of a national railway-labor-organization employer and by two or more subordinate units of a national railway-labor-organization employer, and if the total compensation paid after December 31, 1946, to the employee by all employers other than the subordinate units is less than $300 for the month, then the measure of the employers' tax of each employer other than the subordinate units shall be the full amount of compensation paid by him after December 31, 1946, to such employee for that month, and the measure of the employers' tax of each subordinate unit of a national railway-labor-organization employer, shall be that proportion of the remainder of $300 less the total compensation paid after December 31, 1946, to such employee for the month by all employers other than the subordinate units which the compensation paid after December 31, 1946, by such subordinate unit to the employee for that month bears to the total compensation paid after December 31, 1946, to such employee by all such subordinate units for that month.

(See paragraph (c) of this section, which provides that for the purpose of determining the employers' tax certain nominal compensation earned by an employee of a local lodge or division of a railway-labor-organization employer shall be disregarded.)

For illustrations of the application of certain of the foregoing principles, see the examples, illustrating the analogous principles with respect to the deduction of employees' tax, set forth in § 411.303 (b) of the regulations in this part.

(c) *Nominal monthly compensation earned by employee of local lodge or division of railway-labor-organization employer.* If the amount of compensation earned in any calendar month by an individual as an employee in the service of a local lodge or division of a railway-labor-organization employer is less than $3, such amount shall be disregarded for the purpose of determining the employers' tax.

(d) *Underpayments or overpayments.* Any underpayment or overpayment of employers' tax resulting from the employer's inability to determine, at the time such tax is paid, the correct amount of compensation with respect to which the tax should be paid shall be corrected in accordance with the provisions of §§ 411.701 and 411.703, relating to adjustments of employers' tax, and Subpart H, relating to refunds, credits, and abatements.

§ 411.402 *Rates and computation of employers' tax.* The rates of employers' tax applicable for the respective calendar years are as follows:

	Percent
Compensation paid during the calendar years 1949, 1950, 1951	6
Compensation paid during the calendar year 1952 and subsequent calendar years	6¼

The employers' tax is computed by applying to the amount of compensation with respect to which the employers' tax is imposed the rate for the calendar year in which the compensation is paid.

SUBPART E—EMPLOYEE REPRESENTATIVES' TAX

SECTION 1510 OF THE ACT

RATE OF TAX

In addition to other taxes, there shall be levied, collected, and paid upon the income of each employee representative a tax equal to the following percentages of so much of the compensation, paid to such employee representative after December 31, 1946, for services rendered by him after such date, as is not in excess of $300 for any calendar month:

1. With respect to compensation paid during the calendar years 1947 and 1948, the rate shall be 11½ per centum;

2. With respect to compensation paid during the calendar years 1949, 1950, and 1951, the rate shall be 12 per centum;

3. With respect to compensation paid after December 31, 1951, the rate shall be 12½ per centum. (Sec. 1510, I. R. C., as amended by sec. 3 (c), Act of July 31, 1946, 60 Stat. 723)

§ 411.501 *Measure of employee representatives' tax.* The employee representatives' tax with respect to compensation paid after December 31, 1948, for services rendered after December 31, 1946, is measured by the amount of such compensation paid to an individual for services rendered as an employee representative, excluding, however, the amount of compensation in excess of $300 which is paid after December 31, 1946, to the employee representative for services rendered during any one calendar month after 1946. (See §§ 411.205 to 411.208, relating to compensation.)

§ 411.502 *Rates and computation of employee representatives' tax.* The rates of employee representatives' tax applicable for the respective calendar years are as follows:

	Percent
Compensation paid during the calendar years 1949, 1950, 1951	12
Compensation paid during the calendar year 1952 and subsequent calendar years	12½

The employee representatives' tax is computed by applying to the amount of compensation with respect to which the employee representatives' tax is imposed the rate for the calendar year in which the compensation is paid.

SUBPART F—RETURNS, PAYMENT OF TAX, AND RECORDS

SECTION 1530 OF THE ACT

COLLECTION AND PAYMENT OF TAXES

(a) *Administration.* The taxes imposed by this subchapter shall be collected by the Bureau of Internal Revenue and shall be paid into the Treasury of the United States as internal-revenue collections.

(b) *Time and Manner of Payment.* The taxes imposed by this subchapter shall be collected and paid quarterly or at such other times and in such manner and under such conditions not inconsistent with this subchapter as may be prescribed by the Commissioner with the approval of the Secretary.

* * * * * *

(d) *Fractional Parts of a Cent.* In the payment of any tax under this subchapter, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to 1 cent.

SECTION 1536 OF THE ACT

OTHER LAWS APPLICABLE

All provisions of law, including penalties, applicable with respect to any tax imposed by section 2700 or section 1800, and the provisions of section 3661, insofar as applicable and not inconsistent with the provisions of this subchapter, shall be applicable with respect to the taxes imposed by this subchapter. (Sec. 1536, I. R. C., as amended by sec. 1, Act of Mar. 17, 1941, 55 Stat. 44)

SECTION 2709 OF THE INTERNAL REVENUE CODE, MADE APPLICABLE BY SECTION 1536 OF THE ACT

RECORDS, STATEMENTS, AND RETURNS

Every person liable to any tax imposed by this subchapter, or for the collection thereof, shall keep such records, render under oath such statements, make such returns, and comply with such rules and regulations, as the Commissioner, with the approval of the Secretary, may from time to time prescribe.

SECTION 2701 OF THE INTERNAL REVENUE CODE, MADE APPLICABLE BY SECTION 1536 OF THE ACT

RETURNS

Every person liable for the tax * * * shall make * * * returns under oath * * * to the collector for the district in which is located the principal place of business. Such returns shall contain such information and be made at such times and in such manner as the Commissioner, with the approval of the Secretary, may by regulations prescribe.

SECTION 3603 OF THE INTERNAL REVENUE CODE

NOTICE REQUIRING RECORDS, STATEMENTS, AND SPECIAL RETURNS

Whenever in the judgment of the Commissioner necessary he may require any person, by notice served upon him, to make a return, render under oath such statements, or keep such records as the Commissioner deems sufficient to show whether or not such person is liable to tax.

SECTION 3632 OF THE INTERNAL REVENUE CODE

AUTHORITY TO ADMINISTER OATHS, TAKE TESTIMONY, AND CERTIFY

(a) *Internal Revenue personnel—(1) Persons in charge of administration or internal revenue laws generally.* Every collector, deputy collector, internal revenue agent, and internal revenue officer assigned to duty under an internal revenue agent, is authorized to administer oaths and to take evidence touching any part of the administration of the internal revenue laws with which he is charged, or where such oaths and evidence are authorized by law or regulation authorized by law to be taken.

(2) *Persons in charge of exports and drawbacks.* Every collector of internal revenue and every superintendent of exports and drawbacks is authorized to administer such oaths and to certify to such papers as may be necessary under any regulation prescribed under the authority of the internal revenue laws.

(b) *Others.* Any oath or affirmation required or authorized by any internal revenue law or by any regulations made under authority thereof may be administered by any

person authorized to administer oaths for general purposes by the law of the United States, or of any State, Territory, or possession of the United States, or of the District of Columbia, wherein such oath or affirmation is administered, or by any consular officer of the United States. This subsection shall not be construed as an exclusive enumeration of the persons who may administer such oaths or affirmations.

SECTION 1630 (a) OF THE INTERNAL REVENUE CODE

VERIFICATION OF RETURNS, ETC.

Power of Commissioner to require. The Commissioner, under regulations prescribed by him with the approval of the Secretary, may require that any return, statement, or other document required to be filed under this chapter shall contain or be verified by a written declaration that it is made under the penalties of perjury, and such declaration shall be in lieu of any oath otherwise required. (Sec. 1630 (a), I. R. C., as added by sec. 2 (a), Current Tax Payment Act of 1943, 57 Stat. 126)

SECTION 3612 (a), (b), AND (c) OF THE INTERNAL REVENUE CODE

RETURNS EXECUTED BY COMMISSIONER OR COLLECTOR

(a) *Authority of Collector.* If any person fails to make and file a return or list at the time prescribed by law or by regulation made under authority of law, or makes, willfully or otherwise, a false or fraudulent return or list, the collector or deputy collector shall make the return or list from his own knowledge and from such information as he can obtain through testimony or otherwise.

(b) *Authority of Commissioner.* In any such case the Commissioner may, from his own knowledge and from such information as he can obtain through testimony or otherwise:

(1) *To make return.* Make a return, or

(2) *To amend collector's return.* Amend any return made by a collector or deputy collector.

(c) *Legal status of returns.* Any return or list so made and subscribed by the Commissioner, or by a collector or deputy collector and approved by the Commissioner, shall be prima facie good and sufficient for all legal purposes.

SECTION 3614 (a) OF THE INTERNAL REVENUE CODE

EXAMINATION OF BOOKS AND WITNESSES

To determine liability of the taxpayer. The Commissioner, for the purpose of ascertaining the correctness of any return or for the purpose of making a return where none has been made, is authorized, by any officer or employee of the Bureau of Internal Revenue, including the field service, designated by him for that purpose, to examine any books, papers, records, or memoranda bearing upon the matters required to be included in the return, and may require the attendance of the person rendering the return or of any officer or employee of such person, or the attendance of any other person having knowledge in the premises, and may take his testimony with reference to the matter required by law to be included in such return, with power to administer oaths to such person or persons.

SECTION 2702 (a) OF THE INTERNAL REVENUE CODE, MADE APPLICABLE BY SECTION 1536 OF THE ACT

PAYMENT OF TAX

Date of payment. The tax shall, without assessment by the Commissioner or notice from the collector, be due and payable to the collector for the district in which is located the principal place of business, at the time fixed * * * for filing the return.

§ 411.601 *Quarterly returns of tax—*(a) *In general.* Every employer shall make a tax return on Form CT–1 for the first quarter after December 31, 1948, within which taxable compensation is paid to his employee or employees for services rendered after December 31, 1936, and for each subsequent quarter (whether or not taxable compensation is paid therein) until he files a final return as required by the provisions of § 411.602. Every employee representative shall make a tax return on Form CT–2 for the first quarter after December 31, 1948, within which he is paid taxable compensation for services rendered after December 31, 1946, as an employee representative, and for each subsequent quarter (whether or not he is paid taxable compensation therein) until he files a final return as required by the provisions of § 411.602. One original and a duplicate of each return on Form CT–1 or CT–2 shall be filed with the collector. For purposes of returns under the act, the quarters shall each be three calendar months as follows: (1) From January 1 to March 31, both dates inclusive; (2) from April 1 to June 30, both dates inclusive: (3) from July 1 to September 30, both dates inclusive; and (4) from October 1 to December 31, both dates inclusive.

Except as provided in paragraph (b) of this section, taxable compensation shall be reported in the tax return for the period in which it is deemed under § 411.208 to be paid, unless under such section such compensation may be deemed to be paid in more than one tax-return period, in which case it shall be reported only in the return for the first period in which it is deemed to be paid.

(b) *Returns of employers required by State law to pay compensation on weekly basis.* If any employer is required by the laws of any State to pay compensation weekly, the return of tax with respect to such compensation may, at the election of such employer, cover all pay-roll weeks which, or the major part of which, fall within the period for which a return of tax is required by paragraph (a) of this section. This provision shall not apply, however, to any pay-roll week which falls in two calendar years. Any employer who elects to file a return as provided in this paragraph shall notify the Commissioner in writing of such election and shall include therein a statement setting forth the facts which entitle him to make the election. Such notice shall be in duplicate and shall be attached to the original and duplicate of the return for the first period to which such election applies. Any election so made shall be binding upon the taxpayer with respect to all returns subsequently made by him until the Commissioner authorizes or directs the taxpayer to make a return on a different basis. For the purpose of determining the time when compensation is deemed to be paid in accordance with § 411.208 (c), and of determining the due date of a return in accordance with § 411.605, the calendar month following the period covered by the return of an employer making such election is the same calendar month which would be determinative for such purposes if the employer had not made the election.

An election made by a taxpayer, pursuant to the provisions of § 410.501 (b) (article 501 (b) of Regulations 100), which is in force and effect at the time the taxpayer makes his first return under the regulations in this part shall satisfy the requirements of this paragraph with respect to the making of an election and shall be binding upon the taxpayer with respect to all returns made by him under the regulations in this part until the Commissioner authorizes or directs the taxpayer to make a return on a different basis.

Example. Employer X is required by State law to pay his employees within six days after the compensation is earned. In compliance with the State law, employer X, for services rendered to him for the period June 27 to July 2, 1949, pays his employees on the last-named date. June 1949 is the last month of a period for which a return of tax is required to be filed. Employer X may elect to include in the return required under paragraph (a) of this section for the period April 1 to June 30, 1949, the compensation paid to his employees for the week of June 27 to July 2, 1949, inclusive, although the compensation for July 1 and 2 falls within another period for which a return is required under paragraph (a) of this section. If, in this example, the pay-roll week ended on July 5, 1949, the compensation paid for the pay-roll week June 29 to July 5 would be included in the return period in which July falls although the compensation earned for June 29 and 30 fell in a prior return period under the general rule.

§ 411.602 *Final returns.* The last return on Form CT–1 for any employer who ceases to pay taxable compensation shall be marked "Final return" by the employer or the person filing the return. An employer who has only temporarily ceased to pay taxable compensation shall continue to file returns, but shall enter on the face of any return on which no compensation is required to be reported the date of the last payment of taxable compensation and the date when he expects to resume paying taxable compensation to one or more employees. The last return on Form CT–2 for any employee representative who ceases to be paid taxable compensation for services as an employee representative shall be marked "Final return" by the employee representative or the person filing the return. An employee representative who has only temporarily ceased to be paid taxable compensation for services as an employee representative shall continue to file returns, but shall enter on the face of any return on which no compensation is required to be reported the date of the last payment of taxable compensation and the date when he expects again to be paid taxable compensation for services as an employee representative. The final return on Form CT–1 or CT–2 shall be filed with the collector on or before the sixtieth day after the date of the final payment of compensation with respect to which the tax is imposed, and shall plainly show the period covered and also the date of the last payment of taxable compensation. There shall be executed as a part of each final return a statement, in duplicate, giving the address at which the records required by § 411.608

will be kept and the name of the person keeping such records.

§ 411.603 *Execution of returns.* Each return on Form CT–1 shall be signed by the employer and shall contain or be verified by a written declaration that it is made under the penalties of perjury. The return shall be signed and verified by (a) the individual, if the employer is an individual; (b) the president, vice president, or other principal officer, if the employer is a corporation; or (c) a responsible and duly authorized member or officer having knowledge of its affairs, if the employer is a partnership or other unincorporated organization. Each return on Form CT–2 shall be signed by the employee representative and shall contain or be verified by a written declaration that it is made under the penalties of perjury. The return may be executed by an agent in the name of the taxpayer if an acceptable power of attorney is filed with the collector and if, in the case of the employer's return, such return includes the taxable compensation paid to all employees of the employer for the period covered by the return.

§ 411.604 *Use of prescribed forms.* Copies of the prescribed return forms will so far as possible be regularly furnished taxpayers by collectors without application therefor. A taxpayer will not be excused from making a return, however, by the fact that no return form has been furnished to him. A taxpayer who has not been supplied with the proper form should make application therefor to the collector in ample time to have return prepared, verified, and filed with the collector on or before the due date. (See § 411.605, relating to the place and time for filing returns; see also § 411.602, relating to final returns.) If the prescribed form is not available, a statement made by the taxpayer disclosing for the period for which a return is required the amount of compensation with respect to which the tax is imposed and the amount of tax due may be accepted as a tentative return. If filed within the prescribed time the statement so made will relieve the taxpayer from liability for the addition to tax imposed for the delinquent filing of the return by section 3612 (d) (1) of the Internal Revenue Code (see § 411.905 (a)): *Provided*, That without unnecessary delay such tentative return is supplemented by a return made on the proper form.

Each return, together with any prescribed copies and supporting data, shall be filled in and disposed of in accordance with the instructions and regulations applicable thereto. (See § 411.605, relating to the place and time for filing returns, and § 411.608 (d) and (g), relating to copies of returns, schedules, and statements, and to the place and period for keeping records.) The return shall be carefully prepared so as fully and accurately to set forth the data called for therein. Returns which have not been so prepared will not be accepted as meeting the requirements of the act. Consolidated returns of parent and subsidiary corporations are not permitted.

§ 411.605 *Place and time for filing returns.* Each return on Form CT–1 shall be filed with the collector for the district in which is located the principal place of business of the employer. Each return on Form CT–2 shall be filed with the collector for the district in which is located the legal residence or principal place of business of the employee representative. If the employer has no principal place of business in the United States or if the employee representative has no legal residence or principal place of business in the United States, the return shall be filed with the collector at Baltimore, Md. Except as provided in § 411.602, each return shall be filed on or before the last day of the second calendar month following the period for which it is made. If the last day for filing any return falls on Sunday or a legal holiday, the return may be filed on the next following business day. If placed in the mails, the return shall be posted in ample time to reach the collector's office, under ordinary handling of the mails, on or before the due date. As to additions to tax for failure to file the return within the prescribed time, see § 411.905 (a). See also section 2707 of the Internal Revenue Code, relating to penalties.

§ 411.606 *Payment of tax.* The tax required to be reported on any return is due and payable to the collector, without assessment by the Commissioner or notice by the collector, at the time fixed for filing the return. For provisions relating to interest, additions to tax, and penalties, see §§ 411.903, 411.904, and 411.905 of the regulations in this part and section 2707 of the Internal Revenue Code.

§ 411.607 *When fractional part of cent may be disregarded.* In the payment of taxes to the collector a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to 1 cent. Fractional parts of a cent shall not be disregarded in the computation of taxes. See § 411.303 (d) for provisions relating to fractional parts of a cent in connection with the deduction of employees' tax from compensation.

§ 411.608 *Records*—(a) *Records of employers.* Every employer liable for tax shall keep accurate records of all remuneration (whether in money or in something which may be used in lieu of money) other than tips paid to his employees after December 31, 1948, for services rendered to him (including "time lost") after December 31, 1936. Such records shall show with respect to each employee:

(1) The name and address of the employee;

(2) The total amount and date of each payment of remuneration to the employee (including any sum withheld therefrom as tax or for any other reason) and the period of service (including any period of absence from active service) covered by such payment;

(3) The amount of such payment of remuneration with respect to which the tax is imposed; and

(4) The amount of employees' tax withheld or collected with respect to such payment, and, if collected at a time other than the time such payment was made, the date collected.

If the total payment of remuneration (subparagraph (2) of this paragraph) and the amount thereof with respect to which the tax is imposed (subparagraph (3) of this paragraph) are not equal, the reason therefor shall be made a matter of record. Accurate records of the details of each adjustment or settlement made pursuant to §§ 411.702 or 411.703, including the date and amount of each adjustment or settlement, shall also be kept.

(b) *Records of employees.* While not mandatory, it is advisable for each employee to keep permanent, accurate records showing the name and address of each employer for whom he renders services as an employee, the dates of beginning and termination of such services rendered to each employer, and the information with respect to himself which is required by paragraph (a) of this section to be kept by employers. (See, however, paragraph (e), relating to records of claimants.)

(c) *Records of employee representatives.* Every individual liable for employee representatives' tax shall keep accurate records of all remuneration (whether in money or in something which may be used in lieu of money) paid to him after December 31, 1948, for services rendered (including "time lost") by him as an employee representative after December 31, 1946. Such records shall show:

(1) The name and address of each employee organization employing him;

(2) The total amount and date of each payment of remuneration for services rendered as an employee representative (including any sum withheld therefrom) and the period of service (including any period of absence from active service) covered by such payment; and

(3) The amount of such payment of remuneration with respect to which the employee representatives' tax is imposed.

If the total payment of remuneration (subparagraph (2) of this paragraph) and the amount thereof with respect to which the employee representatives' tax is imposed (subparagraph (3) of this paragraph) are not equal, the reason therefor shall be made a matter of record.

(d) *Copies of returns, schedules, and statements.* Every taxpayer who is required, by the regulations in this part or by instructions applicable to any form prescribed under such regulations, to keep a copy of any return, schedule, statement, or other document shall keep such copy as a part of his records.

(e) *Records of claimants.* Every person (including an employee) claiming refund, credit, or abatement of any tax, penalty, or interest shall keep a complete and detailed record with respect to such tax, penalty, or interest.

(f) *Form of records.* No particular form is prescribed for keeping the records required by this section. Each person required to keep records shall use such forms and systems of accounting as will enable the Commissioner to ascertain whether the taxes for which such person is liable are correctly computed and paid.

(g) *Place and period for keeping records.* All records required by the regulations in this part shall be kept, by the person required to keep them, at one or more convenient and safe locations accessible to internal revenue officers. Such records shall at all times be open for inspection by such officers. If the employer has a principal place of business in the United States, the records required by paragraphs (d) and (e) of this section shall be kept at such place of business. If the employee representative has a principal place of business or legal residence in the United States, the records required by paragraphs (d) and (e) of this section shall be kept at such place of business or residence.

Records required by paragraphs (a), (c), and (d) of this section shall be maintained for a period of at least four years after the date the tax to which they relate becomes due, or the date the tax is paid, whichever is later. Records required by paragraph (e) of this section (including any record required by paragraph (a), (c), or (d) which relates to a claim) shall be maintained for a period of at least four years after the date the claim is filed.

SUBPART G—ADJUSTMENT OF EMPLOYEES' TAX AND EMPLOYERS' TAX

SECTION 1501 (c) OF THE ACT

ADJUSTMENTS

If more or less than the correct amount of tax imposed by section 1500 is paid with respect to any compensation payment, then, under regulations made under this subchapter by the Commissioner, with the approval of the Secretary, proper adjustments, with respect both to the tax and the amount to be deducted, shall be made, without interest, in connection with subsequent compensation payments to the same employee by the same employer.

SECTION 1521 OF THE ACT

ADJUSTMENTS

If more or less than the correct amount of the tax imposed by section 1520 is paid with respect to any compensation payment, then, under regulations made by the Commissioner, with the approval of the Secretary, proper adjustments with respect to the tax shall be made, without interest, in connection with subsequent excise-tax payments made by the same employer.

§ 411.701 *Adjustments in general.* Errors in the payment of employees' tax and employers' tax must be adjusted in certain cases without interest. Not all corrections of erroneous collections or payments of tax, however, constitute adjustments within the meaning of the act and the regulations in this part. The various situations under which such adjustments shall be made are set forth in §§ 411.702 and 411.703, the provisions of which also relate to settlement other than by adjustment under certain circumstances set forth therein. No underpayment of employees' tax or employers' tax shall be reported pursuant to such sections after receipt from the collector of notice and demand for payment thereof based upon an assessment, but the amount shall be paid in accordance with such notice and demand. Every return on which an adjustment or settlement is reported pursuant to §§ 411.702 or 411.703 must have securely attached as a part thereof a statement, in duplicate, explaining the adjustment or settlement in detail and setting forth such other information as may be required by the regulations in this part and by the instructions relating to the return.

§ 411.702 *Adjustment of employees' tax*—(a) *Undercollections*—(1) *Prior to filing of return.* If no employees' tax or less than the correct amount of employees' tax is deducted from any payment of compensation to an employee and the error is ascertained prior to the time the return on Form CT–1 is filed with the collector for the period for which such compensation is required to be reported (see § 411.601), the employer shall nevertheless report on such return and pay to the collector the correct amount of employees' tax. However, the reporting and payment by the employer of the correct amount of such tax in accordance with this subparagraph do not constitute an adjustment, and the amount shall not be reported as an adjustment on the return. The obligation of the employee to the employer with respect to the undercollection of the employees' tax in such case is a matter for settlement between the employee and the employer.

(2) *After return is filed.* If no employees' tax or less than the correct amount of employees' tax is deducted from any payment of compensation to an employee and the correct amount of such tax is not reported on a return on Form CT–1 and paid to the collector pursuant to subparagraph (1) of this paragraph, the employer shall collect the amount of the undercollection by deducting such amount from the first payment of compensation subject to employees' tax made to such employee after the error is ascertained. Such deduction shall be made without interest. The amount so deducted shall be reported by the employer as an adjustment on the return on Form CT–1 for the tax-return period for which such first payment of compensation is required to be reported (see § 411.601). The undercollection shall be deducted from such first payment of compensation in addition to the employees' tax imposed with respect to such compensation and shall be paid to the collector at the time fixed for the payment of such employees' tax. If an adjustment is reported pursuant to this subparagraph and is paid when due, the amount of the adjustment is payable without interest. However, if the amount of the adjustment is not paid when due, interest thereafter accrues. If an employer makes an erroneous collection of employees' tax from two or more of his employees, a separate settlement must be made with respect to each employee. Thus, an overcollection of employees' tax from one employee may not be used to offset an undercollection of such tax from another.

If after the error is ascertained no further payment to the employee of compensation subject to employees' tax is made or contemplated by the employer who failed to deduct the correct amount of employees' tax, the undercollection is not adjustable under this section. In such case if the undercollection is not reported and paid pursuant to subparagraph (1) of this paragraph, the amount of such undercollection shall be reported on the employer's next return on Form CT–1. (For interest accruing on amounts so reported, see § 411.903.) The obligation of the employee to the employer with respect to the undercollection of the employees' tax in such case is a matter for settlement between the employee and the employer.

(b) *Overcollections*—(1) *Prior to filing of return.* If an employer (i) collects more than the correct amount of employees' tax from any employee with respect to the compensation required to be reported for any tax-return period, and (ii) reimburses the employee in the amount of the overcollection prior to the time the return on Form CT–1 for such period is filed with the collector, the employer shall not report on any return or pay to the collector the amount of the overcollection. However, every overcollection for which the employee is not reimbursed as provided in this subparagraph must be reported and paid to the collector with the return on Form CT–1 for the period with respect to which the overcollection was made.

(2) *After return is filed.* If an employer collects from any employee and pays to the collector more than the correct amount of employees' tax, the employer shall adjust the overcollection when the first payment of compensation subject to employees' tax is made to the employee after the error is ascertained. The adjustment shall be made by applying the overcollection against the employees' tax which is imposed with respect to such first payment of compensation, and by deducting the remainder, if any, of the tax from such compensation. In case the overcollection is greater in amount than the employees' tax imposed with respect to such first payment of compensation, the balance shall be applied against the employees' tax imposed with respect to the next consecutive payments of compensation subject to employees' tax until the adjustment is completed. An overcollection is adjustable under this subparagraph only to the extent that the adjustment of such overcollection is completed and reported on a return filed within the 4-year period after the date the overpayment was made to the collector. A claim for credit or refund (in accordance with § 411.801) may be filed within such 4-year period for such part of any overcollection paid to the collector as cannot be adjusted under this subparagraph. If after the error is ascertained no further payment to the employee of compensation subject to employees' tax is made or contemplated by the employer who made the overcollection, the overpayment is not adjustable under this section. In such case the employer may pay the amount of the overcollection, or such part thereof as remains unadjusted under this section, to the employee and file a claim for credit or refund in accordance with § 411.801. In lieu of paying such amount prior to filing a claim, the employer may obtain the employee's written consent to allowance of the claim.

§ 411.703 *Adjustment of employers' tax*—(a) *Underpayments.* If no em-

ployers' tax or less than the correct amount of employers' tax with respect to any payment of compensation is reported on a return on Form CT–1 and paid to the collector, the employer shall adjust the underpayment by reporting the amount of the underpayment as additional tax on his next return on Form CT–1 filed after the error is ascertained. The amount of each underpayment adjusted in accordance with this paragraph shall be paid to the collector at the time fixed for filing such return. If an adjustment is reported pursuant to this paragraph and is paid when due, the amount of the adjustment is payable without interest. However, if the amount of the adjustment is not paid when due, interest thereafter accrues.

(b) *Overpayments.* If an employer pays more than the correct amount of employers' tax with respect to any payment of compensation, the employer shall adjust the overpayment by reporting the amount of the overpayment as a deduction from the amount of employers' tax reported on his next return on Form CT–1 filed after the error is ascertained. An overpayment is adjustable under this paragraph only to the extent that the overpayment is deducted from the employers' tax reported on a return filed within the 4-year period after the date the overpayment was made to the collector. A claim for credit or refund (in accordance with § 411.801) may be filed within such 4-year period for such part of any overpayment as cannot be adjusted under this paragraph. If after the error is ascertained no employers' tax is reported on a return on Form CT–1 and paid to the collector by the employer who made the overpayment, or such reporting and payment are not contemplated by the employer, the overpayment is not adjustable under this section. In such case the employer may file a claim for credit or refund in accordance with § 411.801.

SUBPART H—REFUNDS, CREDITS, AND ABATEMENTS

SECTION 1502 OF THE ACT

OVERPAYMENTS

If more * * * than the correct amount of the tax imposed by section 1500 is paid or deducted with respect to any compensation payment and the overpayment * * * of the tax cannot be adjusted under section 1501 (c), the amount of the overpayment shall be refunded * * * in such manner and at such times (subject to the statute of limitations properly applicable thereto) as may be prescribed by regulations under this subchapter as made by the Commissioner, with the approval of the Secretary.

SECTION 1522 OF THE ACT

OVERPAYMENTS

If more * * * that the correct amount of the tax imposed by section 1520 is paid or deducted with respect to any compensation payment and the overpayment * * * of the tax cannot be adjusted under section 1521, the amount of the overpayment shall be refunded * * * in such manner and at such times (subject to the statute of limitations properly applicable thereto) as may be prescribed by regulations under this subchapter as made by the Commissioner, with the approval of the Secretary.

SECTION 2703 (a) OF THE INTERNAL REVENUE CODE, MADE APPLICABLE BY SECTION 1536 OF THE ACT

ERRONEOUS PAYMENTS

In General. In the case of any overpayment or overcollection of the tax * * *, the person making such overpayment or overcollection may take credit therefor against taxes due upon any * * * return, and shall make refund of any excessive amount collected by him upon proper application by the person entitled thereto.

SECTION 3770 (a) OF THE INTERNAL REVENUE CODE

AUTHORITY TO MAKE ABATEMENTS, CREDITS, AND REFUNDS

To taxpayers—(1) *Assessments and collections generally.* Except as otherwise provided by law in the case of income, war-profits, excess-profits, estate, and gift taxes, the Commissioner, subject to regulations prescribed by the Secretary, is authorized to remit, refund, and pay back all taxes erroneously or illegally assessed or collected, all penalties collected without authority, and all taxes that appear to be unjustly assessed or excessive in amount, or in any manner wrongfully collected.

(2) *Assessments and collections after limitation period.* Any tax (or any interest, penalty, additional amount, or addition to such tax) assessed or paid after the expiration of the period of limitation properly applicable thereto shall be considered an overpayment and shall be credited or refunded to the taxpayer if claim therefor is filed within the period of limitation for filing such claim.

* * * * *

(Sec. 3770 (a), I. R. C., as amended by sec. 508 (b), Second Revenue Act of 1940, 54 Stat. 1008)

SECTION 3313 OF THE INTERNAL REVENUE CODE

PERIOD OF LIMITATION UPON REFUNDS AND CREDITS

All claims for the refunding or crediting of any internal revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty alleged to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected must * * * be presented to the Commissioner within four years next after the payment of such tax, penalty, or sum. The amount of the refund * * * shall not exceed the portion of the tax, penalty, or sum paid during the four years immediately preceding the filing of the claim, or if no claim was filed, then during the four years immediately preceding the allowance of the refund.

SECTION 3477 OF THE UNITED STATES REVISED STATUTES

WHEN ASSIGNMENTS OF CLAIM VOID

All transfers and assignments made of any claim upon the United States, or of any part or share thereof, or interest therein, whether absolute or conditional, and whatever may be the consideration therefor, and all powers of attorney, orders, or other authorities for receiving payment of any such claim, or of any part or share thereof, shall be absolutely null and void, unless they are freely made and executed in the presence of at least two attesting witnesses, after the allowance of such a claim, the ascertainment of the amount due, and the issuing of a warrant for the payment thereof. Such transfers, assignments, and powers of attorney, must recite the warrant for payment, and must be acknowledged by the person making them, before an officer having authority to take acknowledgments of deeds, and shall be certified by the officer; and it must appear by the certificate that the officer, at the time of the acknowledgment, read and fully explained the transfer, assignment, or warrant of attorney to the person acknowledging the same.

* * * * *

§ 411.801 *Refund or credit of overpayments which are not adjustable; abatement of overassessments*—(a) *Who may make claims.* If more than the correct amount of tax, penalty, or interest is paid to the collector, the person who paid such tax, penalty, or interest to the collector may file a claim for refund of such overpayment or such person may take credit for the overpayment on any return on Form CT–1 or Form CT–2 which he subsequently files. (See paragraph (a) of this section, relating in part to overpayments which are adjustable.) If more than the correct amount of tax, penalty, or interest is assessed but not paid to the collector, the person against whom the assessment is made may file a claim for abatement of such overassessment. (See also paragraph (c) of this section, relating to claims by employees.)

(b) *Statements supporting employers' claims for employees' tax.* Every claim filed by an employer for refund, credit, or abatement of employees' tax collected from an employee shall include a statement that the employer has repaid the tax to the employee or has secured the written consent of such employee to allowance of the refund, credit, or abatement. In every such case, the employer shall maintain as part of his records the written receipt of the employee, showing the date and amount of the repayment, or the written consent of the employee, whichever is used in support of the claim. (See paragraph (d) of this section, relating to form of claims.)

(c) *Refund claims made by employees.* If (1) more than the correct amount of employees' tax is collected by an employer from an employee and paid to the collector, and (2) such overcollection is not adjustable under § 411.702, and (3) the employee does not receive reimbursement in any manner from such employer and does not authorize the employer to file a claim and receive refund or credit, such employee may file a claim for refund of such overpayment. The employee shall submit with the claim a statement setting forth the extent, if any, to which the employer has reimbursed the employee in any manner for the overcollection, the amount, if any, of credit or refund of such overpayment claimed by the employer or authorized by the employee to be claimed by the employer, and such facts as will establish that the overpayment is not adjustable under § 411.702. The employee shall obtain such statement, if possible, from the employer, who should include in such statement the fact that it is made in support of a claim against the United States to be filed by the employee for refund of employees' tax paid by such employer to the collector of internal revenue. If the employer's statement is not submitted with the claim, the employee shall make the statement to the best of his knowledge and belief, and shall include therein an explanation of his inability to obtain the statement from the employer.

(d) *Form of claims.* Each claim for refund or abatement under this section shall be made on Form 843 in accordance with the regulations in this part and with the instructions relating to such form. Copies of Form 843 may be obtained from any collector. If credit is taken under this section, a claim on Form 843 is not required, but the return on which such credit is claimed shall have securely attached as a part thereof a statement, in duplicate, which shall constitute the claim for credit, setting forth in detail the grounds and facts relied upon in support of the credit and showing such other information as is required by the regulations in this part and by the instructions relating to the return.

(e) *Limitations on claims.* No refund or credit will be allowed after the expiration of four years after the payment to the collector of the tax, penalty, or interest, except upon one or more of the grounds set forth in a claim filed prior to the expiration of such 4-year period. No refund or credit of an overpayment will be allowed if such overpayment is adjustable under §§ 411.702 or 411.703.

(f) *Claims improperly made.* Any claim which does not comply with the requirements of this section will not be considered for any purpose as a claim for refund, credit, or abatement.

(g) *Proof of representative capacity.* If a return is made by an individual who thereafter dies and a refund claim is made by a legal representative of the deceased, certified copies of the letters testamentary, letters of administration, or other similar evidence must be annexed to the claim, to show the authority of the executor, administrator, or other fiduciary by whom the claim is made. If an executor, administrator, guardian, trustee, receiver, or other fiduciary makes a return and thereafter a refund claim is made by the same fiduciary, documentary evidence to establish the legal authority of the fiduciary need not accompany the claim, provided a statement is made in the claim showing that the return was made by the fiduciary and that the latter is still acting. In such cases, if a refund or interest is to be paid, letters testamentary, letters of administration, or other evidence may be required, but should be submitted only upon the receipt of a specific request therefor. If a claim is made by a fiduciary other than the one by whom the return was made, the necessary documentary evidence should accompany the claim. The affidavit may be made by the agent of the person assessed, but in such case a power of attorney must accompany the claim.

SECTION 7 (e) OF THE CARRIERS TAXING ACT OF 1937

Any tax paid under this Act (Carriers Taxing Act of 1937) by a taxpayer with respect to any period with respect to which he is not liable to tax under this Act shall be credited against the tax, if any, imposed by title VIII of the Social Security Act upon such taxpayer, and the balance, if any, shall be refunded. * * *

SECTION 1531 OF THE ACT

ERRONEOUS PAYMENTS

Any tax paid under this subchapter by a taxpayer with respect to any period with respect to which he is not liable to tax under this subchapter shall be credited against the tax, if any, imposed by subchapter A upon such taxpayer, and the balance, if any, shall be refunded.

§ 411.802 *Credit and refund of taxes paid under Railroad Retirement Tax Act or corresponding prior law for period during which liability existed under Federal Insurance Contributions Act or corresponding prior law*—(a) *Taxes paid under Carriers Taxing Act of 1937.* If any person pays any amount as tax under the Carriers Taxing Act of 1937 with respect to any period for which he is not liable for such tax and such person is liable for a tax imposed by Title VIII of the Social Security Act, the amount paid as tax under the Carriers Taxing Act of 1937 shall be credited against the tax for which such person is liable under Title VIII of the Social Security Act and the balance, if any, shall be refunded. Each claim for refund under this paragraph shall be made in accordance with § 411.801. Each claim for credit under this paragraph shall be made on Form 843 in accordance with the instructions relating to such form and the applicable provisions of § 411.801. See article 703 of Regulations 100 for credit or refund of amounts paid as tax under Title VIII of the Social Security Act for any period during which liability existed under the Carriers Taxing Act of 1937.

(b) *Taxes paid under Railroad Retirement Tax Act.* If any person pays any amount as tax under the Railroad Retirement Tax Act (in force before, on, or after January 1, 1947) with respect to any period for which he is not liable for such tax and such person is liable for a tax imposed by the Federal Insurance Contributions Act (in force before, on, or after January 1, 1940), the amount paid as tax under the Railroad Retirement Tax Act shall be credited against the tax for which the person is liable under the Federal Insurance Contributions Act and the balance, if any, shall be refunded. Each claim for refund under this paragraph shall be made in accordance with § 411.801. Each claim for credit under this paragraph shall be made on Form 843 in accordance with the instructions relating to such form and the applicable provisions of § 411.801 of the regulations in this part. See section 1422 of the Federal Insurance Contributions Act for credit or refund of amounts paid as tax under such act for any period during which liability existed under the Railroad Retirement Tax Act.

SUBPART I—MISCELLANEOUS PROVISIONS

ASSESSMENT AND COLLECTION OF UNDERPAYMENTS

SECTION 1502 OF THE ACT

UNDERPAYMENTS

If * * * less than the correct amount of the tax imposed by section 1500 is paid or deducted with respect to any compensation payment and the * * * underpayment of the tax cannot be adjusted under section 1501 (c), * * * the amount of the underpayment shall be collected in such manner and at such times (subject to the statute of limitations properly applicable thereto) as may be prescribed by regulations under this subchapter as made by the Commissioner, with the approval of the Secretary.

SECTION 1522 OF THE ACT

UNDERPAYMENTS

If * * * less than the correct amount of the tax imposed by section 1520 is paid or deducted with respect to any compensation payment and the * * * underpayment of the tax cannot be adjusted under section 1521, * * * the amount of the underpayment shall be collected in such manner and at such times (subject to the statute of limitations properly applicable thereto) as may be prescribed by regulations under this subchapter as made by the Commissioner, with the approval of the Secretary.

§ 411.901 *Assessment and collection of underpayments.* If any employers' tax or employees' tax is not paid to the collector when due, the Commissioner may, as the circumstances warrant, assess the tax (whether or not the underpayment is otherwise adjustable) or afford the employer opportunity to adjust the underpayment pursuant to §§ 411.702 or 411.703. Unpaid employers' tax or employees' tax may be assessed against the employer. Employees tax not collected by the employer may also be assessed against the employee. If any employee representatives' tax is not paid when due, it shall be assessed against the employee representative. The unpaid amount, together with interest and penalty, if any, will be collected, pursuant to section 3655 of the Internal Revenue Code and other applicable provisions of law, from the person against whom the assessment is made. If an employer pays employees' tax pursuant to an assessment against him without an adjustment having been made pursuant to § 411.702, reimbursement is a matter to be settled between the employer and the employee. (See § 411.903, relating to interest, and § 411.904, relating to penalty for failure to pay an assessment after notice and demand. See also § 411.902, relating to jeopardy assessments.)

JEOPARDY ASSESSMENTS

SECTION 3660 OF THE INTERNAL REVENUE CODE

JEOPARDY ASSESSMENT

(a) If the Commissioner believes that the collection of any tax (other than income tax, estate tax, and gift tax) under any provision of the internal-revenue laws will be jeopardized by delay, he shall, whether or not the time otherwise prescribed by law for making return and paying such tax has expired, immediately assess such tax (together with all interest and penalties the assessment of which is provided for by law). Such tax, penalties, and interest shall thereupon become immediately due and payable, and immediate notice and demand shall be made by the collector for the payment thereof. Upon failure or refusal to pay such tax, penalty, and interest, collection thereof by distraint shall be lawful without regard to the period prescribed in section 3690.

(b) The collection of the whole or any part of the amount of such assessment may be stayed by filing with the collector a bond in such amount, not exceeding double the amount as to which the stay is desired, and with such sureties, as the collector deems necessary, conditioned upon the payment of the amount collection of which is stayed, at the time at which, but for this section, such amount would be due.

SECTION 3690 OF THE INTERNAL REVENUE CODE

AUTHORITY TO DISTRAIN

If any person liable to pay any taxes neglects or refuses to pay the same within ten

days after notice and demand, it shall be lawful for the collector or his deputy to collect the said taxes, with such interest and other additional amounts as are required by law, by distraint and sale, in the manner provided in this subchapter, of the goods, chattels, or effects, including stocks, securities, bank accounts, and evidences of debt, of the person delinquent as aforesaid.

§ 411.902 *Jeopardy assessments.* Whenever, in the opinion of the collector, the collection of the tax will be jeopardized by delay, he should report the case promptly to the Commissioner by telegram or letter. The communication should recite the full name and address of the person involved, the tax-return period or periods involved, the amount of tax due for each period, the date any return was filed by or for the taxpayer for such period, a reference to any prior assessment made for such period against the taxpayer, and a statement as to the reason for the recommendation, which will enable the Commissioner to assess the tax, together with all penalties and interest due. Upon assessment such tax, penalty, and interest shall become immediately due and payable, whereupon the collector will issue immediately a notice and demand for payment of the tax, penalty, and interest.

The collection of the whole or any part of the amount of the jeopardy assessment may be stayed by filing with the collector a bond in such amount, not exceeding double the amount with respect to which the stay is desired, and with such sureties as the collector deems necessary. Such bond shall be conditioned upon the payment of the amount, collection of which is stayed, at the time at which, but for the jeopardy assessment, such amount would be due. In lieu of surety or sureties the taxpayer may deposit with the collector bonds or notes of the United States, or bonds or notes fully guaranteed by the United States, having a par value not less than the amount of the bond required to be furnished, together with an agreement authorizing the collector in case of default to collect or sell such bonds or notes so deposited.

Upon refusal to pay, or failure to pay or give bond, the collector will proceed immediately to collect the tax, penalty, and interest by distraint without regard to the period prescribed in section 3690 of the Internal Revenue Code.

INTEREST AND ADDITIONS TO TAX

SECTION 1530 (C) OF THE ACT

ADDITIONS TO TAX IN CASE OF DELINQUENCY

If a tax imposed by this subchapter is not paid when due, there shall be added as part of the tax (except in the case of adjustments made in accordance with the provisions of this subchapter) interest at the rate of 6 per centum per annum from the date the tax became due until paid.

SECTION 3655 OF THE INTERNAL REVENUE CODE

NOTICE AND DEMAND FOR TAX

(a) *Delivery.* Where it is not otherwise provided, the collector shall in person or by deputy, within ten days after receiving any list of taxes from the Commissioner, give notice to each person liable to pay any taxes stated therein, to be left at his dwelling or usual place of business, or to be sent by mail, stating the amount of such taxes and demanding payment thereof.

(b) *Addition to tax for nonpayment.* If such person does not pay the taxes, within ten days after the service or the sending by mail of such notice, it shall be the duty of the collector or his deputy to collect the said taxes with a penalty of 5 per centum additional upon the amount of taxes, and interest at the rate of 6 per centum per annum from the date of such notice to the date of payment * * *.

§ 411.903 *Interest.* If the tax is not paid to the collector when due and is not adjusted under § 411.702 or 411.703, interest accrues at the rate of 6 percent per annum.

§ 411.904 *Addition to tax for failure to pay an assessment after notice and demand.* (a) If tax, penalty, or interest is assessed and the entire amount thereof is not paid within 10 days after the date of issuance of notice and demand for payment thereof, based on such assessment, there accrues under section 3655 of the Internal Revenue Code (except as provided in paragraph (b) of this section) a penalty of 5 percent of the assessment remaining unpaid at the expiration of such period.

(b) If, within 10 days after the date of issuance of notice and demand, a claim for abatement of any amount of the assessment is filed with the collector, the 5 percent penalty does not attach with respect to such amount. If the claim is rejected in whole or in part and the amount rejected is not paid, the collector shall issue notice and demand for such amount. If payment is not made within 10 days after the date the collector issues the notice and demand, the 5 percent penalty attaches with respect to the amount rejected. The filing of the claim does not stay the running of interest.

SECTION 3612 (d) AND (e) OF THE INTERNAL REVENUE CODE

(d) *Additions to tax*—(1) *Failure to file return.* In case of any failure to make and file a return or list within the time prescribed by law, or prescribed by the Commissioner or the collector in pursuance of law, the Commissioner shall add to the tax 25 per centum of its amount, except that when a return is filed after such time and it is shown that the failure to file it was due to a reasonable cause and not to willful neglect, no such addition shall be made to the tax: *Provided,* That in the case of a failure to make and file a return required by law, within the time prescribed by law or prescribed by the Commissioner in pursuance of law, if the last date so prescribed for filing the return is after August 30, 1935, then there shall be added to the tax, in lieu of such 25 per centum: 5 per centum if the failure is for not more than 30 days, with an additional 5 per centum for each additional 30 days or fraction thereof during which failure continues, not to exceed 25 per centum in the aggregate.

(2) *Fraud.* In case a false or fraudulent return or list is willfully made, the Commissioner shall add to the tax 50 per centum of its amount.

* * * * *

(e) *Collection of additions to tax.* The amount added to any tax under paragraphs (1) and (2) of subsection (d) shall be collected at the same time and in the same manner and as a part of the tax unless the tax has been paid before the discovery of the neglect, falsity, or fraud, in which case the amount so added shall be collected in the same manner as the tax.

§ 411.905 *Additions to tax for delinquent or false returns*—(a) *Delinquent returns.* If a person fails to make and file a return required by the regulations in this part within the prescribed time, a certain percent of the amount of the tax is added to the tax unless the return is later filed and failure to file the return within the prescribed time is shown to be due to reasonable cause and not to willful neglect. The amount to be added to the tax is 5 percent if the failure is for not more than 30 days, with an additional 5 percent for each additional 30 days or fraction thereof during which failure continues, not to exceed 25 percent in the aggregate. In computing the period of delinquency all Sundays and holidays after the due date are counted. Two classes of delinquents are subject to this addition to the tax:

(1) Those who do not file returns and for whom returns are made by a collector, a deputy collector, or the Commissioner; and

(2) Those who file tardy returns and are unable to show reasonable cause for the delay.

A person who files a tardy return and wishes to avoid the addition to the tax for delinquency must make an affirmative showing of all facts alleged as a reasonable cause for failure to file the return on time in the form of a statement which should be attached to the return as a part thereof.

(b) *False returns.* If a false or fraudulent return is willfully made, the addition to tax under section 3612 (d) (2) of the Internal Revenue Code is 50 percent of the total tax due for the entire period involved, including any tax previously paid.

PENALTIES

SECTION 2707 OF THE INTERNAL REVENUE CODE, MADE APPLICABLE BY SECTION 1536 OF THE ACT

PENALTIES

(a) Any person who willfully fails to pay, collect, or truthfully account for and pay over the tax * * *, or willfully attempts in any manner to evade or defeat any such tax or the payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty of the amount of the tax evaded, or not paid, collected, or accounted for and paid over, to be assessed and collected in the same manner as taxes are assessed and collected. No penalty shall be assessed under this subsection for any offense for which a penalty may be assessed under authority of section 3612.

(b) Any person required under this subchapter to pay any tax, or required by law or regulations made under authority thereof to make a return, keep any records, or supply any information, for the purposes of the computation, assessment, or collection of any tax imposed by this subchapter who willfully fails to pay such tax, make such returns, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, be fined not more than $10,000, or imprisoned for not more than one year, or both, together with the costs of prosecution.

(c) Any person required under this subchapter to collect, account for and pay over any tax imposed by this subchapter, who willfully fails to collect or truthfully account for and pay over such tax, and any person who willfully attempts in any manner to

evade or defeat any tax imposed by this subchapter or the payment thereof, shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, be fined not more than $10,000, or imprisoned for not more than five years, or both, together with the casts of prosecution.

(d) The term "person" as used in this section includes an officer or employee of a corporation, or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.

SECTION 3616 OF THE INTERNAL REVENUE CODE

PENALTIES

Whenever any person:

(a) *False returns.* Deliveres or discloses to the collector or deputy any false or fraudulent list, return, account, or statement, with intent to defeat or evade the valuation, enumeration, or assessment intended to be made; or,

(b) *Neglect to obey summons.* Being duly summoned to appear to testify, or to appear and produce books as required under section 3615, neglects to appear or to produce said books:

He shall be fined not exceeding $1,000, or be imprisoned not exceeding one year, or both, at the discretion of the court, with costs of prosecution.

* * * * *

SECTION 286 OF TITLE 18 OF THE UNITED STATES CODE

CONSPIRACY TO DEFRAUD THE GOVERNMENT WITH RESPECT TO CLAIMS

Whoever enters into any agreement, combination, or conspiracy to defraud the United States, or any department or agency thereof, by obtaining or aiding to obtain the payment or allowance of any false, fictitious or fraudulent claim, shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

SECTION 287 OF TITLE 18 OF THE UNITED STATES CODE

FALSE, FICTITIOUS OR FRAUDULENT CLAIMS

Whoever makes or presents to any person or officer in the civil, military, or naval service of the United States, or to any department or agency thereof, any claim upon or against the United States, or any department or agency thereof, knowing such claim to be false, fictitious, or fraudulent, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

SECTION 1001 OF TITLE 18 OF THE UNITED STATES CODE

STATEMENTS OR ENTRIES GENERALLY

Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

SECTION 1630 (b) OF THE INTERNAL REVENUE CODE

PENALTIES

Every person who willfully makes and subscribes any return, statement, or other document, which contains or is verified by a written declaration that it is made under the penalties of perjury, and which he does not believe to be true and correct as to every material matter, shall be guilty of a felony, and, upon conviction thereof, shall be subject to the penalties prescribed for perjury in section 125 of the Criminal Code (Title 18, U. S. C., sec. 1621) (Sec. 1630 (b), I. R. C., as added by sec. 2 (a), Current Tax Payment Act of 1943, 57 Stat. 126)

SECTION 1621 OF TITLE 18 OF THE UNITED STATES CODE

PERJURY GENERALLY

Whoever, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall, except as otherwise expressly provided by law, be fined not more than $2,000 or imprisoned not more than five years, or both.

SECTION 3793 (b) OF THE INTERNAL REVENUE CODE

FRAUDULENT RETURNS, AFFIDAVITS, AND CLAIMS

(1) *Assistance in preparation or presentation.* Any person who willfully aids or assists in, or procures, counsels, or advises the preparation or presentation under, or in connection with any matter arising under, the internal revenue laws, of a false or fraudulent return, affidavit, claim, or document, shall (whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, affidavit, claim, or document) be guilty of a felony, and, upon conviction thereof, be fined not more than $10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

(2) *Person defined.* The term "person" as used in this subsection includes an officer or employee of a corporation or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.

OTHER LAWS APPLICABLE

SECTION 1536 OF THE ACT

OTHER LAWS APPLICABLE

All provisions of law, including penalties, applicable with respect to any tax imposed by section 2700 or section 1800, and the provisions of section 3661, insofar as applicable and not inconsistent with the provisions of this subchapter, shall be applicable with respect to the taxes imposed by this subchapter. (Sec. 1536, I. R. C., as amended by sec. 1, Act of Mar. 17, 1941, 55 Stat. 44)

RULES AND REGULATIONS

SECTION 1535 OF THE ACT

RULES AND REGULATIONS

The Commissioner, with the approval of the Secretary, shall make and publish such rules and regulations as may be necessary for the enforcement of this subchapter.

SECTION 3791 OF THE INTERNAL REVENUE CODE

RULES AND REGULATIONS

(a) *Authorization*—(1) *In general.* * * * the Commissioner, with the approval of the Secretary, shall prescribe and publish all needful rules and regulations for the enforcement of this title [Internal Revenue Code].

(2) *In case of change in law.* The Commissioner may make all such regulations, not otherwise provided for, as may have become necessary by reason of any alteration of law in relation to internal revenue.

(b) *Retroactivity of regulations and rulings.* The Secretary, or Commissioner with the approval of the Secretary, may prescribe the extent, if any, to which any ruling, regulation, or Treasury Decision, relating to the internal revenue laws, shall be applied without retroactive effect.

§ 411.906 *Promulgation of regulations.* In pursuance of section 1535 of the act, section 3791 of the Internal Revenue Code, and other provisions of the internal revenue laws, the foregoing regulations are to be prescribed. (See §§ 411.102 and 411.103, relating to the scope of the regulations in this part and the extent to which they supersede prior regulations.)

[F. R. Doc. 48-9684; Filed, Nov. 3, 1948; 8:57 a. m.]

DEPARTMENT OF AGRICULTURE

Production and Marketing Administration

[7 CFR, Part 729]

PEANUTS

NOTICE OF PROPOSED PROCLAMATION WITH RESPECT TO 1949 NATIONAL MARKETING QUOTA, APPORTIONMENT OF THE NATIONAL ACREAGE ALLOTMENT AND ESTABLISHMENT OF FARM ACREAGE ALLOTMENTS FOR 1949 CROP

Pursuant to Title III of the Agricultural Adjustment Act of 1938, as amended (7 U. S. C. and Sup. 1301–1393), the Secretary of Agriculture is required by section 358 (a) thereof to proclaim, between July 1 and December 1 of each calendar year, the amount of the national marketing quota for peanuts from the crop produced in the next succeeding calendar year. Pursuant to section 358 (c) of the said act, the Secretary is further required to apportion the national marketing quota so proclaimed, as converted into a national peanut acreage allotment, among the several peanut-producing States.

In addition to the foregoing proclamation and determination to be made with respect to the 1949 crop of peanuts, the Secretary has under consideration the formulation of regulations governing the apportionment of the State acreage allotments among farms pursuant to section 358 (d) of the said act.

Prior to proclaiming the national marketing quota, apportioning the national acreage allotment, and issuing the regulations providing for the establishment of farm acreage allotments and farm marketing quotas, consideration will be given to any data, views, and recommendations relating thereto which are submitted in writing to the Director, Fats and Oils Branch, Production and Marketing Administration, U. S. Department of Agriculture, Washington 25, D. C. All submissions must be postmarked not later than 10 days from the date of publication of this notice in the FEDERAL REGISTER.

Issued at Washington, D. C. this 1st day of November 1948.

[SEAL] RALPH S. TRIGG, *Administrator.*

[F. R. Doc. 48-9698; Filed, Nov. 3, 1948; 8:57 a. m.]

[7 CFR, Part 986]

[Docket No. AO–196]

HANDLING OF HOPS GROWN IN OREGON, CALIFORNIA, WASHINGTON, AND IDAHO, AND OF HOP PRODUCTS PRODUCED THEREFROM IN THESE STATES

NOTICE OF HEARING WITH RESPECT TO PROPOSED MARKETING AGREEMENT AND ORDER

Correction

In Federal Register Document 48–9630, appearing at page 6448 in the issue for Tuesday, November 2, 1948, the following corrections should be made:

1. In the eighth line of § 986.6 (d) (1), the word "certified" should be changed to "certificated". In the fourteenth line of paragraph (f) the word "years" should be changed to "year".

2. In the 37th line of § 986.7 (b) (2), the word "each" should be changed to "such".

3. Sections 986.19 to 986.21 and the undesignated paragraph following § 986.21 should be changed to read as follows:

*§ 986.19 *Counterparts.* This agreement may be executed in multiple counterparts, and, when one counterpart is signed by the Secretary, all such counterparts shall constitute when taken together one and the same instrument as if all such signatures were contained in one original.

*§ 986.20 *Additional parties.* After this agreement first takes effect, any handler or dealer may become a party to this agreement if a counterpart thereof is executed by him and delivered to the Secretary. This agreement shall take effect as to such new contracting party at the time such counterpart is delivered to the Secretary, and the benefits, privileges, and immunities conferred by this agreement shall then be effective as to such new contracting party.

*§ 986.21 *Request for order.* Each signatory handler and dealer hereto requests the Secretary to issue an order pursuant to the act regulating the handling of hops and hop products in the same manner as provided in this agreement.

*In witness hereof the contracting parties acting under the provisions of the act for the purposes and subject to the limitations herein contained and not otherwise have hereunto set their respective hands and seals.

4. Paragraph (e), appearing in the first column on page 6499, should be designated paragraph (c).

NOTICES

FEDERAL COMMUNICATIONS COMMISSION

[Docket Nos. 7924, 9180]

PIEDMONT BROADCASTING CO. AND BRUCE JOHNSON CO.

ORDER DESIGNATING APPLICATIONS FOR CONSOLIDATED HEARING ON STATED ISSUES

In re applications of Charles B. Britt, Joe H. Britt, Vardry D. Ramseur, and John Arthur Ramseur a partnership d/b as Piedmont Broadcasting Company, Docket No. 7924, File No. BP–5374, Greenville, South Carolina; James M. Bruce and C. R. Johnson, Sr. a partnership d/b as Bruce Johnson Company, Anderson, South Carolina, Docket No. 9180, File No. BP–6531: For construction permits.

At a session of the Federal Communications Commission, held at its offices in Washington, D. C., on the 27th day of October 1948;

The Commission having under consideration the above-entitled applications each requesting a permit to construct a new standard broadcast station to operate on the frequency 1490 kilocycles, with 250 watts power, unlimited time in the places specified above;

It is ordered, That, pursuant to section 309 (a) of the Communications Act of 1934, as amended, the said applications be, and they are hereby, designated for hearing in a consolidated proceeding, at a time and place to be designated by subsequent order of the Commission, upon the following issues:

1. To determine the legal, technical, financial, and other qualifications of the applicant partnerships and the partners to construct and operate the proposed stations.

2. To determine the areas and populations which may be expected to gain or lose primary service from the operation of the proposed stations and the character of other broadcast service available to those areas and populations.

3. To determine the type and character of program service proposed to be rendered and whether it would meet the requirements of the populations and areas proposed to be served.

4. To determine whether the operation of the proposed stations would involve objectionable interference with any existing broadcast stations and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other broadcast service to such areas and populations.

5. To determine whether the operation of the proposed stations would involve objectionable interference each with the other or with the services proposed in any other pending applications for broadcast facilities and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other broadcast service to such areas and populations.

6. To determine whether the installation and operation of the proposed stations would be in compliance with the Commission's rules and Standards of Good Engineering Practice Concerning Standard Broadcast Stations.

7. To determine on a comparative basis which, if either of the applications in this consolidated proceeding should be granted.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] T. J. SLOWIE,
Secretary

[F. R. Doc. 48–9691; Filed, Nov. 3, 1948; 8:54 a. m.]

[Docket No. 8138]

DR. FRANCISCO A. MARQUEZ

ORDER DESIGNATING APPLICATION FOR FURTHER HEARING ON STATED ISSUE

In re application of Dr. Francisco A. Marquez, Aguadilla, Puerto Rico, Docket No. 8138, File No. BP–5615, for construction permit.

At a session of the Federal Communications Commission, held at its offices in Washington, D. C., on the 27th day of October 1948;

The Commission having under consideration the above-entitled application of Dr. Francisco A. Marquez for a permit to construct a new standard broadcast station in Aguadilla, Puerto Rico, to operate on the frequency 550 kilocycles with 1 kilowatt power unlimited time; and the record made at the hearing in the above proceeding on March 30, 1948; and

It appearing, that, the above-entitled application and the application of Jacinto Sugranes (File No. BP–5725; Docket No. 8139) were designated for hearing in a consolidated proceeding on February 20, 1947, and hearing thereon finally scheduled for March 30, 1948; that on March 29, 1948, Jacinto Sugranes filed a petition requesting dismissal of his said application without prejudice; that at the hearing in the above-entitled proceeding on March 30, 1948, the applicant Jacinto Sugranes failed to make an appearance; and that on June 11, 1948, the said petition requesting dismissal without prejudice was denied and on the Commission's own motion his application was dismissed with prejudice for failure to file an affidavit of consideration as required by § 1.366 of the Commission's rules and regulations;

It further appearing, that, Dr. Francisco A. Marquez testified in the above-entitled proceeding that he did not pay or promise payment in money or any other thing of value to Jacinto Sugranes in consideration for his requesting dismissal of his aforesaid application (File No. BP–5725; Docket No. 8139); and that the Commission has in its possession new evidence which is contrary to the aforesaid testimony of Dr. Marquez;

It is ordered, on the Commission's own motion, that the record in the above-entitled proceeding heretofore closed on March 30, 1948, be, and it is hereby, reopened for further hearing to be held at a time and place to be determined by subsequent order of the Commission upon the following issue:

To determine whether Dr. Francisco A. Marquez or, with his knowledge and consent, his Agents or Representatives did

pay or promise payment in money or any other thing of value to Jacinto Sugranes in consideration for requesting dismissal of his application (File No. BP–5725; Docket No. 8139).

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] T. J. SLOWIE,
Secretary.

[F. R. Doc. 48–9687; Filed, Nov. 3, 1948; 8:53 a. m.]

[Docket No. 8272]

CHICAGO FEDERATION OF LABOR (WCFL)

ORDER DESIGNATING APPLICATION FOR HEARING ON STATED ISSUES

In re application of Chicago Federation of Labor (WCFL), Chicago, Ill., Docket No. 8272, File No. BMP–2486, for modification of construction permit.

At a session of the Federal Communications Commission, held at its offices in Washington, D. C., on the 27th day of October 1948;

The Commission having under consideration a petition for reconsideration, filed on July 29, 1948, by Superior Broadcasting Service, Inc., licensee of Station WCAZ, Carthage, Illinois, directed against the Commission's action of July 12, 1948, in granting the above-entitled application of Chicago Federation of Labor for modification of its license for the operation of Station WCFL, Chicago, Illinois, by providing a different directional antenna for daytime use, DA–1; an opposition thereto filed by Chicago Federation of Labor and petitioner's reply to the opposition; and

It appearing, that the operation of Station WCFL as proposed in the above-entitled application would cause objectionable interference within the normally protected daytime service area of Station WCAZ as determined by applicable rules and regulations;

It is ordered, That pursuant to section 405 of the Communications Act of 1934, as amended, and § 1.390 (a) of the Commission's rules and regulations, the said petition for reconsideration filed by Superior Broadcasting Service, Inc. (WCAZ) be, and it is hereby, granted; that the action of the Commission of July 12, 1948, granting the above-entitled application of Chicago Federation of Labor be, and it is hereby, set aside; and that the said application be, and it is hereby, designated for hearing, at a time and place to be designated by subsequent order of the Commission, upon the following issues:

1. To determine the areas and populations which may be expected to gain or lose primary service from the operation of Station WCFL as proposed and the character of other broadcast service available to those areas and populations.

2. To determine whether the operation of Station WCFL as proposed would involve objectionable interference with Station WCAZ, Carthage, Illinois or with any other existing broadcast stations, or with the services proposed in any pending applications, and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other broadcast service to such areas and populations.

3. To determine whether the installation and operation of Station WCFL as proposed would be in compliance with the Commission's rules and Standards Concerning Standard Broadcasting Stations.

It is further ordered, That Superior Broadcasting Service, Inc., licensee of Station WCAZ, be, and it is hereby, made a party to this proceeding.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] T. J. SLOWIE,
Secretary.

[F. R. Doc. 48–9686; Filed, Nov. 3, 1948; 8:53 a. m.]

[Docket Nos. 8285, 8627, 9161]

NORTH JERSEY BROADCASTING CO., INC. (WPAT) ET AL.

ORDER DESIGNATING APPLICATIONS FOR CONSOLIDATED HEARING ON STATED ISSUES

In re applications of North Jersey Broadcasting Company Inc. (WPAT), Paterson, New Jersey, Docket No. 8285, File No. BP–4613; The Monocacy Broadcasting Company (WFMD), Frederick, Maryland, Docket No. 8627, File No. BP–5128; Valley Broadcasting Corporation, Holyoke, Massachusetts, Docket No. 9161, File No. BP–6615; for construction permits.

At a session of the Federal Communications Commission, held at its offices in Washington, D. C., on the 27th day of October 1948;

The Commission having under consideration the above-entitled application of Valley Broadcasting Corporation to construct a new standard broadcast station to operate on the frequency 930 kc with 500 w power, daytime only in Holyoke, Massachusetts.

It appearing, that the Commission on April 10, 1947, designated for hearing the above-entitled application of North Jersey Broadcasting Company Incorporated requesting a construction permit to authorize Station WPAT, Paterson, New Jersey, to operate unlimited time on the frequency 930 kc, with 5 kw power, using a directional antenna day and night; that on November 14, 1947, the above-entitled application of Monocacy Broadcasting Company for increase in power on the frequency 930 kilocycles was consolidated therewith for hearing; and that the hearing on the said applications is scheduled to commence on January 17, 1949, at Washington, D. C.

It is ordered, That, pursuant to section 309 (a) of the Communications Act of 1934, as amended, the said application of Valley Broadcasting Corporation be, and it is hereby, designated for hearing in the above-consolidated proceeding at the time and place aforesaid upon the following issues:

1. To determine the legal, technical, financial, and other qualifications of the applicant corporation, its officers, directors and stockholders to construct and operate the proposed station.

2. To determine the areas and populations which may be expected to gain or lose primary service from the operation of the proposed station and the character of other broadcast service available to those areas and populations.

3. To determine the type and character of program service proposed to be rendered and whether it would meet the requirements of the populations and areas proposed to be served.

4. To determine whether the operation of the proposed station would involve objectionable interference with Station WHAY, New Britain, Connecticut, or with any other existing broadcast stations and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other broadcast service to such areas and populations.

5. To determine whether the operation of the proposed station would involve objectionable interference with the services proposed in the pending application of North Jersey Broadcasting Company, Inc. (File No. BP–4613; Docket No. 8285) or in any other pending applications for broadcast facilities and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other broadcast service to such areas and populations.

6. To determine whether the installation and operation of the proposed station would be in compliance with the Commission's rules and Standards of Good Engineering Practice Concerning Standard Broadcast Stations.

7. To determine on a comparative basis which, if any of the aplications in this consolidated proceeding should be granted.

It is further ordered, That the orders of the Commission of April 10, 1947, and of November 14, 1947, designating for hearing the said applications of North Jersey Broadcasting Company, Inc., and of The Monocacy Broadcasting Company be, and they are hereby, amended to include the said application of Valley Broadcasting Corporation.

It is further ordered, That The Central Connecticut Broadcasting Company, licensee of Station WHAY, New Britain, Connecticut, be, and it is hereby, made a party to this proceeding.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] T. J. SLOWIE,
Secretary.

[F. R. Doc. 48–9690; Filed, Nov. 3, 1948; 8:54 a. m.]

[Docket Nos. 9167, 9168]

JEFFERSON COUNTY RADIO AND TELEVISION CO. AND CECIL W. ROBERTS

ORDER DESIGNATING APPLICATIONS FOR CONSOLIDATED HEARING ON STATED ISSUES

In re applications of Amos A. Govero, Donald M. Donze and Clifton M. Poindexter, a partnership d/b as Jefferson County Radio and Television Company, Festus, Missouri, Docket No. 9168, File No. BP–6907; Cecil W. Roberts, Festus, Missouri, Docket No. 9167, File No. BP–6853; for construction permits.

At a session of the Federal Communications Commission, held at its offices

in Washington, D. C., on the 27th day of October 1948;

The Commission having under consideration the above-entitled applications of Jefferson County Radio and Television Company and of Cecil W. Roberts each requesting a permit to construct a new standard broadcast station at Festus, Missouri to operate on the frequency 1010 kc, with 250 w power, daytime only;

It is ordered, That, pursuant to section 309 (a) of the Communications Act of 1934, as amended, the said applications be, and they are hereby, designated for hearing in a consolidated proceeding at a time and place to be designated by subsequent order of the Commission, upon the following issues:

1. To determine the legal, technical, financial, and other qualifications of the individual applicant and of the applicant partnership and the partners to construct and operate the proposed stations.

2. To determine the areas and populations which may be expected to gain or lose primary service from the operation of the proposed stations and the character of other broadcast service available to those areas and populations.

3. To determine the type and character of program service proposed to be rendered and whether it would meet the requirements of the populations and areas proposed to be served.

4. To determine whether the operation of the proposed stations would involve objectionable interference with any existing broadcast stations and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other broadcast service to such areas and populations.

5. To determine whether the operation of the proposed stations would involve objectionable interference each with the other or with the services proposed in any other pending applications for broadcast facilities and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other broadcast service to such areas and populations.

6. To determine whether the installation and operation of the proposed stations would be in compliance with the Commission's rules and Standards of Good Engineering Practice Concerning Standard Broadcast Stations.

7. To determine on a comparative basis which, if either, of the applications in this consolidated proceeding should be granted.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] T. J. SLOWIE,
Secretary.

[F. R. Doc. 48-9688; Filed, Nov. 3, 1948; 8:53 a. m.]

[Docket No. 9186]

MRS. JANE RASCOE

ORDER DESIGNATING APPLICATION FOR HEARING ON STATED ISSUES

In re application of Mrs. Jane Rascoe, Corpus Christi, Texas, Docket No. 9186, File No. BP-6784, for construction permit.

At a session of the Federal Communications Commission, held at its offices in Washington, D. C., on the 27th day of October 1948;

The Commission having under consideration the above-entitled application requesting a permit to construct a new standard broadcast station to operate on the frequency 1580 kilocycles, with 250 watts power, daytime only at the place specified above, and also having under consideration a petition filed by Weldon Lawson, licensee of Station KWED, that the above-entitled application be designated for hearing on the issue of interference to Station KWED and that he be permitted to intervene;

It is ordered, That the said petition be, and it is hereby, granted; and that, pursuant to section 309 (a) of the Communications Act of 1934, as amended, the said application of Mrs. Jane Rascoe be, and it is hereby, designated for hearing, at a time and place to be designated by subsequent order of the Commission upon the following issues:

1. To determine the areas and populations which may be expected to gain or lose primary service from the operation of the proposed station and the character of other broadcast service available to those areas and populations.

2. To determine whether the operation of the proposed station would involve objectionable interference with Station KWED, Seguin, Texas, or with any other existing broadcast stations and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other broadcast service to such areas and populations.

3. To determine whether the operation of the proposed station would involve objectionable interference with the services proposed in any other pending applications for broadcast facilities and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other broadcast service to such areas and populations.

4. To determine whether the installation and operation of the proposed station would be in compliance with the Commission's rules and Standards of Good Engineering Practice Concerning Standard Broadcast Stations.

It is further ordered, That Weldon Lawson, licensee of Station KWED, Seguin, Texas, be, and he is hereby, made a party to the proceeding.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] T. J. SLOWIE,
Secretary.

[F. R. Doc. 48-9689; Filed, Nov. 3, 1948; 8:53 a. m.]

[Docket Nos. 9181, 9182]

OVERLOOK HILLS DEVELOPMENT CO. AND WEIRTON BROADCASTING CO.

ORDER DESIGNATING APPLICATIONS FOR CONSOLIDATED HEARING ON STATED ISSUES

In re applications of Overlook Hills Development Company, Steubenville, Ohio, Docket No. 9182, file No. BP-6792; Weirton Broadcasting Company, Weirton, West Virginia, Docket No. 9181, file No. BP-6788; for construction permits.

At a session of the Federal Communications Commission, held at its offices in Washington, D. C. on the 27th day of October 1948;

The Commission having under consideration the above-entitled applications of Overlook Hills Development Company requesting a permit to construct a new standard broadcast station to operate on the frequency 1430 kc, with 1 kw power, unlimited time at Steubenville, Ohio, and of Weirton Broadcasting Company to construct a new standard broadcast station to operate on the frequency 1430 kc, with 500 watts power, daytime only in Weirton, West Virginia;

It is ordered, That, pursuant to section 309 (a) of the Communications Act of 1934, as amended the said applications be, and they are hereby, designated for hearing in a consolidated proceeding at a time and place to be designated by subsequent order of the Commission, upon the following issues:

1. To determine the legal, technical, financial, and other qualifications of the applicant corporations their officers, directors and stockholders to construct and operate the proposed stations.

2. To determine the areas and populations which may be expected to gain or lose primary service from the operation of the proposed stations and the character of other broadcast service available to those areas and populations.

3. To determine the type and character of program service proposed to be rendered and whether it would meet the requirements of the populations and areas proposed to be served.

4. To determine whether the operation of the proposed stations would involve objectionable interference with Stations WRRN, Warren, Ohio, or WJPA, Washington, Pennsylvania, or with any other existing broadcast stations and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other broadcast service to such areas and populations.

5. To determine whether the operation of the proposed stations would involve objectionable interference each with the other or with the services proposed in any other pending applications for broadcast facilities and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other broadcast service to such areas and populations.

6. To determine whether the installation and operation of the proposed stations would be in compliance with the Commission's rules and Standards of Good Engineering Practice Concerning Standard Broadcast Stations.

7. To determine on a comparative basis which, if either, of the applications in this consolidated proceeding should be granted.

It is further ordered, That Nied and Stevens, Incorporated, licensee of Station WRRN, Warren, Ohio, and Washington Broadcasting Company, licensee of Station WJPA, Washington, Pennsylvania, be, and they are hereby, made parties to the proceeding.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] T. J. SLOWIE,
Secretary.

[F. R. Doc. 48-9692; Filed, Nov. 3, 1948; 8:54 a. m.]

[Docket Nos. 9183-9185]

TAUNTON RADIO CORP. ET AL.

ORDER DESIGNATING APPLICATIONS FOR CONSOLIDATED HEARING ON STATED ISSUES

In re applications of Taunton Radio Corporation, Taunton, Massachusetts, Docket No. 9183, File No. BP-6786; Jackson Associates Incorporated, Attleboro, Massachusets, Docket No. 9184, File No. BP-6917; for construction permits and of L. R. Liles, Richard C. O'Hare, and Deuel Richardson, a partnership d/b as Charles River Broadcasting Company (WCRB), Waltham, Massachusetts, Docket No. 9185, File No. BML-1304, for modification of license.

At a session of the Federal Communications Commission, held at its offices in Washington, D. C., on the 27th day of October 1948;

The Commission having under consideration the above-entitled applications of Taunton Radio Corporation and of Jackson Associates Incorporated each requesting a permit to construct a new standard broadcast station to operate on the frequency 1320 kc, with 1 kw power, daytime only in the places specified above and also having under consideration the application of Charles River Broadcasting Company for modification of license of station WCRB now operating on frequency 1330 kc, with 500 w power, daytime only to increase power to 1 kw.

It is ordered, That, pursuant to section 309 (a) of the Communications Act of 1934, as amended, the said applications be, and they are hereby, designated for hearing in a consolidated proceeding at a time and place to be designated by subsequent order of the Commission upon the following issues:

1. To determine the legal, technical, financial, and other qualifications of the applicant corporations, their officers, directors and stockholders and the technical, financial, and other qualifications of the applicant partnership and the partners to construct and operate the proposed stations and station WCRB as proposed.

2. To determine the areas and populations which may be expected to gain or lose primary service from the operation of the proposed stations and station WCRB as proposed and the character of other broadcast service available to those areas and populations.

3. To determine the type and character of program service proposed to be rendered and whether it would meet the requirements of the populations and areas proposed to be served.

4. To determine whether the operation of the proposed stations and of station WCRB as proposed would involve objectionable interference with any existing broadcast stations and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other broadcast service to such areas and population.

5. To determine whether the operation of the proposed stations and of station WCRB as proposed would involve objectionable interference each with the other or with the services proposed in any other pending applications for broadcast facilities and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other broadcast service to such areas and populations.

6. To determine whether the installation and operation of the proposed stations and of station WCRB as proposed would be in compliance with the Commission's rules and Standards of Good Engineering Practice Concerning Standard Broadcast Stations.

7. To determine on a comparative basis which, if any, of the applications in this consolidated proceeding should be granted.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] T. J. SLOWIE,
Secretary.

[F. R. Doc. 48-9693; Filed, Nov. 3, 1948; 8:54 a. m.]

[Docket Nos. 9177, 9178]

FORT PAYNE ON THE AIR AND JAMES L. KILLIAN

ORDER DESIGNATING APPLICATIONS FOR CONSOLIDATED HEARING ON STATED ISSUES

In re applications of Glenn M. Gravitt, Colonel J. C. Vessels and H. V. Roberts, d/b as Fort Payne on the Air, Fort Payne, Alabama, Docket No. 9178, File No. BP-6863; James L. Killian, Fort Payne, Alabama, Docket No. 9177, File No. BP-6748; For construction permits.

At a session of the Federal Communications Commission, held at its offices in Washington, D. C., on the 27th day of October 1948;

The Commission having under consideration the above-entitled applications each requesting permits to construct new standard broadcast stations in Fort Payne, Alabama, with Glenn M. Gravitt, et al., seeking the frequency 1250 kc, with power of 250 watts days and 100 watts nights, unlimited time, and James L. Killian asking for the frequency 1260 kc, with 250 watts power, daytime only;

It is ordered, That, pursuant to section 309 (a) of the Communications Act of 1934, as amended, the said applications be, and they are hereby, designated for hearing in a consolidated proceeding at a time and place to be designated by subsequent order of the Commission, upon the following issues:

1. To determine the legal, technical, financial, and other qualifications of the applicant and of the applicant partnership Glenn M. Gravitt, et al. and the partners to construct and operate their proposed stations.

2. To determine the areas and populations which may be expected to gain or lose primary service from the operation of the proposed stations and the character of other broadcast service available to those areas and populations.

3. To determine the type and character of program service proposed to be rendered and whether it would meet the requirements of the populations and areas proposed to be served.

4. To determine whether the operation of the proposed stations would involve objectionable interference with existing broadcast stations and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other broadcast service to such areas and populations.

5. To determine whether the operation of the proposed stations would involve objectionable interference with the services proposed in any other pending applications for broadcast facilities and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other broadcast service to such areas and populations.

6. To determine whether the installation and operation of the proposed stations would be in compliance with the Commission's rules and Standards of Good Engineering Practice Concerning Standard Broadcast Stations, particularly with respect to the assignment of a Class IV Station to a regional channel.

7. To determine on a comparative basis which, if either, of the applications in this consolidated proceeding should be granted.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] T. J. SLOWIE,
Secretary.

[F. R. Doc. 48-9694; Filed, Nov. 3, 1948; 8:54 a. m.]

[Docket Nos. 8404, 9179]

GLENNS FALLS PUBLICITY CORP. (WGLN) AND RICHARD O'CONNOR

ORDER DESIGNATING APPLICATIONS FOR CONSOLIDATED HEARING ON STATED ISSUES

In re applications of Glenns Falls Publicity Corporation (WGLN), Glenns Falls, New York, Docket No. 8404, File No. BML-1247 (CP); Richard O'Connor, Saratoga Springs, New York, Docket No. 9179, File No. BP-6808; for construction permits.

At a session of the Federal Communications Commission, held at its offices in Washington, D. C., on the 27th day of October 1948;

The Commission having under consideration the above-entitled application of Glenns Falls Publicity Corporation to change the facilities of Station WGLN, Glenns Falls, New York, so as to specify the frequency 1280 kc, with 1 kw power, DA-2, unlimited time, in lieu of 1230 kc, with 100 watts power, unlimited time; and that of Richard O'Connor for a permit to construct a new standard broadcast station in Saratoga Springs, New York, to operate daytime only on the frequency 1280 kc, with 1 kw power;

It is ordered, That, pursuant to section 309 (a) of the Communications Act of 1934, as amended, the said applications be, and they are hereby, designated for hearing in a consolidated proceeding at a time and place to be designated by subsequent order of the Commission upon the following issues:

1. To determine the legal, technical, financial and other qualifications of Richard O'Connor to construct and operate his proposed station and the technical, financial and other qualifications of the corporate applicant Glenns Falls Publicity Corporation, its officers, directors and stockholders to construct and operate Station WGLN as proposed.

2. To determine the areas and populations which may be expected to gain

or lose primary service from the proposed operations and the character of other broadcast service available to those areas and populations.

3. To determine the type and character of program service proposed to be rendered and whether it would meet the requirements of the populations and areas proposed to be served.

4. To determine whether the proposed operations would involve objectionable interference with any existing broadcast stations and in particular whether the nighttime operation of Station WGLN as proposed would result in a clipping of the service area of Station WOV, New York, N. Y., and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other broadcast service to such areas and populations.

5. To determine whether the proposed operations would involve objectionable interference with the services proposed in any other pending applications for broadcast facilities and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other broadcast service to such areas and populations.

6. To determine whether the installation and operation of the proposals would be in compliance with the Commission's rules and Standards of Good Engineering Practice Concerning Standard Broadcast Stations.

7. To determine on a comparative basis which, if either, of the applications in this consolidated proceeding should be granted.

It is further ordered, That Wodaam Corporation licensee of Station WOV, New York, N. Y., be, and it is hereby, made a party to these proceedings.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] T. J. SLOWIE,
Secretary.

[F. R. Doc. 48-9695; Filed, Nov. 3, 1948; 8:54 a. m.]

[Docket No. 8876]

PENN-ALLEN BROADCASTING CO. (WFMZ)

ORDER CONTINUING HEARING

In re application of Penn-Allen Broadcasting Company (WFMZ), Allentown, Pennsylvania, Docket No. 8876, File No. BMPH-1100, for modification of FM permit.

Whereas, the above-entitled application is presently scheduled to be heard on October 27, 1948, at Washington, D. C.; and

Whereas, the public interest, convenience and necessity would be served by a continuance of the said hearing;

It is ordered, This 26th day of October 1948, that the hearing on the above-entitled application be, and it is hereby, continued to 10:00 a. m. Monday, November 29, 1948, at Washington, D. C.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] T. J. SLOWIE,
Secretary.

[F. R. Doc. 48-9696; Filed, Nov. 3, 1948; 8:55 a. m.]

FEDERAL POWER COMMISSION

[Docket No. E-6160]

CENTRAL VERMONT PUBLIC SERVICE CORP.

NOTICE OF ORDER CONSENTING TO WITHDRAWAL OF RATE SCHEDULES AND TERMINATING PROCEEDING

NOVEMBER 1, 1948.

Notice is hereby given that, on October 29, 1948, the Federal Power Commission issued its order entered October 28, 1948, consenting to withdrawal of rate schedules and terminating proceeding in the above entitled matter.

[SEAL] J. H. GUTRIDE,
Acting Secretary.

[F. R. Doc. 48-9673; Filed, Nov. 3, 1948; 8:49 a. m.]

[Docket Nos. E-6170, E-6171]

UNITED ILLUMINATING CO. AND CONNECTICUT LIGHT AND POWER CO.

NOTICE OF ORDERS AUTHORIZING ADDITIONAL USE OF PERMANENT CONNECTION FOR EMERGENCY SERVICE

NOVEMBER 1, 1948.

Notice is hereby given that, on October 29, 1948, the Federal Power Commission issued its orders entered October 28, 1948, authorizing additional use of permanent connection for emergency service in the above-designated matters.

[SEAL] J. H. GUTRIDE,
Acting Secretary.

[F. R. Doc. 48-9674; Filed, Nov. 3, 1948; 8:49 a. m.]

[Docket No. G-1141]

PANHANDLE EASTERN PIPE LINE CO. ET AL.

NOTICE OF ORDER

NOVEMBER 1, 1948.

Notice is hereby given that, on October 28, 1948, the Federal Power Commission issued its order entered October 28, 1948, in the above-designated matter, pertaining to emergency service rules and regulations of Panhandle Eastern Pipe Line Company.

[SEAL] J. H. GUTRIDE,
Acting Secretary.

[F. R. Doc. 48-9672; Filed, Nov. 3, 1948; 8:49 a. m.]

[Docket No. G-1148]

PHILLIPS PETROLEUM CO.

ORDER INSTITUTING INVESTIGATION

OCTOBER 28, 1948.

Upon consideration of the Commission's official files and the public records of other federal agencies pertaining to Phillips Petroleum Company (hereinafter referred to as "Respondent"), a Delaware corporation with principal executive offices at 80 Broadway, New York 5, New York, and Phillips Building, Bartlesville, Oklahoma;

It appears to the Commission that:

(a) Respondent is engaged, among other things, in the production, purchase, gathering, transportation and sale of natural gas in the States of Arkansas, Kansas, New Mexico, Oklahoma, and Texas;

(b) Respondent reports that it owns and operates approximately 3,800 miles of gathering, residue, and other gas lines located in the States designated above, together with various compressor or booster stations and appurtenant facilities;

(c) In this Commission's opinion "In the Matter of Michigan-Wisconsin Pipe Line Company," January 17, 1947, 6 F. P. C. —, 67 P. U. R. (N. S.) 427, we stated therein with respect to the motion filed by the City of Detroit on October 11, 1946, for an order requiring respondent herein to be made a party to the proceeding in Docket No. G-669:

> We believe that whether Phillips is or is not a natural gas company cannot properly be determined in this proceeding. If such determination is required it should be made a separate case after a thorough investigation of Phillips' operations and we therefore find that the motion of the City of Detroit should be dismissed.

(d) By its letters of June 19, August 15, September 6, 1940, April 3, 1941, and August 3, 1943, to this Commission, respondent has disclaimed that it is or will be a natural-gas company within the meaning of that term as used in the Natural Gas Act;

(e) In 1947, respondent reported to the Securities and Exchange Commission, with respect to its sale of natural gas to purchasers which transport and sell the gas in interstate commerce, that "Although such sales and the transportation of natural gas antecedent thereto constitute operations by the Company as a 'natural gas company' under the Natural Gas Act, and, as such, are subject to the Federal Power Commission's jurisdiction, unless the exercise of such jurisdiction constitutes an interference with state regulation of production and gathering, the Commission with Commissioner Draper dissenting in a declaration made on the 15th day of August 1947, disclaimed the intention to exercise jurisdiction over such sales if made at arm's length, that is, sales made as an incident to the producing or gathering operation by a producer or gatherer of gas to a nonaffiliate (Order No. 139, Docket No. R-106)";

(f) By reason of its operations, facilities, and sales of natural gas to purchasers which transport and resell such gas in interstate commerce for ultimate public consumption, respondent may be a natural-gas company subject to the jurisdiction of the Commission;

The Commission finds that: It is necessary and proper, in the public interest, that an investigation be instituted by the Commission, upon its own motion:

(1) To determine whether respondent is a natural-gas company within the meaning of the Natural Gas Act; and

(2) Into and concerning all rates, charges, or classifications demanded, observed, charged or collected by respondent in connection with any transportation or sale of natural gas, subject to the jurisdiction of the Commission, and any rules, regulations, practices, or

contracts affecting such rates, charges, or classifications;

The Commission, upon its own motion, orders that: An investigation of respondent, Phillips Petroleum Company, be and hereby is instituted for the purpose of enabling the Commission:

(A) To determine with respect to the respondent:

(i) Whether it is a natural-gas company within the meaning of the Natural Gas Act; and

(ii) Whether, in connection with any transportation or sale of natural gas, subject to the jurisdiction of the Commission, any rates, charges, or classifications demanded, observed, charged, or collected, or any rules, regulations, practices or contracts affecting such rates, charges, or classifications are unjust, unreasonable, unduly discriminatory, or preferential; and

(B) If it shall find, after hearing, that the respondent is a natural-gas company within the meaning of the Natural Gas Act, and that any of respondent's rates, charges, classifications, rules, regulations, practices, or contracts, subject to the jurisdiction of the Commission, are unjust, unreasonable, unduly discriminatory, or preferential, to determine and fix by order or orders just and reasonable, nondiscriminatory or nonpreferential rates, charges, classifications, rules, regulations, practices, or contracts to be thereafter observed and in force.

Date of issuance: October 29, 1948.

By the Commission.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 48-9675; Filed Nov. 3, 1948; 8:49 a. m.]

[Project No. 346]

MINNESOTA POWER & LIGHT CO.

ORDER GRANTING IN PART AND DENYING IN PART APPLICATION FOR REHEARING, FIXING DATE FOR REHEARING, AND STAYING PRIOR ORDER

OCTOBER 28, 1948.

On October 4, 1948, Minnesota Power & Light Company (Licensee) filed an application for rehearing with respect to certain dispositions made in the Commission's opinion and order issued on September 2, 1948, determining the actual legitimate original cost of Project No. 346 and prescribing the accounting therefor.

Except as to two amounts, i. e., $201,883.64,[1] claimed as part of the cost of the so-called de Buys land and disallowed in the opinion and order under Item No. 6, and $41,539.69, comprising Item No. 9 and representing costs incurred in reinforcing the piers of the Minneapolis, St. Paul and Sault Ste. Marie Railway bridge, no new issues of fact or law have been presented or alleged in said application for rehearing which would justify a reversal or revision of the dispositions made in said opinion and order.

The objections to March 1, 1925, as the date on which commercial operation of the project began, rather than July 1, 1925, are clearly negatived by the substantial project generation[2] during the intervening four-month period. Furthermore, the objections, for the most part, have been considered and disposed of in the opinion issued on September 2, 1948. The additional objection that certain construction activities continued after March 1, 1925, is insufficient to warrant reconsideration of the date on which the project began commercial operation, for as pointed out "In the Matter of Chelan Electric Company, Licensee," 1 F. P. C. 102, 106, "expenditures for construction activities may be proper charges to capital accounts after the beginning of operation, but interest upon such expenditures must of necessity cease when the facilities become available for operation."

The contention that the Commission should allow an amount of $170,349.87 not previously claimed is without merit since it represents an alleged cost not to the original licensee, the Pike Rapids Power Company (Pike Rapids), but to American Power & Light Company (American) in acquiring the stock of Pike Rapids. An allowance of $181,235.93 has been made under Item No. 1 of the opinion and order as representing the cost of the project lands, etc., to Pike Rapids as of December 29, 1923, as of which date American is alleged to have invested $351,585.80, or $170,349.87 in excess of our allowance, in acquiring the stock of Pike Rapids. What American paid for the stock of Pike Rapids is immaterial in determining the actual legitimate original cost of this project. The license was issued to and the project was constructed by Pike Rapids, and only the cost incurred by it in connection therewith may be allowed ("Alabama Power Co. v. Federal Power Commission," 134 F. 2d 602, 606; "Northwestern Electric Company v. Federal Power Commission," 321 U. S. 119; Cf. "Niagara Falls Power Co. v. Federal Power Commission," 137 F. 2d 787, 794). In disposing of the issue in the "Alabama Power Company" case the Court stated:

> The dam site was acquired by Alabama from Interstate in connection with the assignment of the latter's license, the two companies having originally been strangers. What Alabama Power Company paid Interstate is not the point, for the project had already been undertaken by Interstate and defined by the license to Interstate. Interstate was the licensee. The assignment of the license to Alabama Power Company operated to place Alabama in the shoes of Interstate, to complete the project under the license in accordance with its terms. The price that Interstate had paid for the dam site and other land interests, as well as the construction costs expended by it go into the original cost account, but the price Alabama may have paid Interstate for them is immaterial, as the Commission rightly held (p. 606).

In the case at bar, it should be noted that the license was never assigned to American.

The objection in the application for rehearing that the Commission erred in failing to make clear in its order that its determination is without prejudice to the rights of the Licensee, when the occasion for their exercise may arise, to a judicial determination of net investment in accordance with the provisions of section 14 of the Federal Water Power Act of June 10, 1920, unaffected by the amendment thereof by the Public Utility Act of 1935, was also raised and rejected in ("Pennsylvania Power & Light Company v. Federal Power Commission," 139 F. 2d 445, 453, cert. den. 321 U. S. 798) where it was held that a licensee has no "vested right to have its investment determined by one procedure rather than by another at least so long as it was accorded a right to be heard and an ultimate judicial review. Accordingly the change of procedure which the 1935 amendment brought about did not, as applied to the present proceeding, violate the Fifth Amendment." For the same reasons, the objection is here rejected.

Because we are granting rehearing on two items of claimed cost, it is desirable to stay paragraphs (A), (B), (C) and (E) of the Commission's order of September 2, 1948, as hereinafter provided in paragraph (C), for if there is a court review, this stay will have the effect of permitting one review proceeding to be initiated as to any or all aspects of the Commission's order on which rehearing has been requested.

Wherefore, the Commission orders that:

(A) A rehearing on the amounts of $201,883.64 and $41,539.69 be and the same is hereby granted, such rehearing to begin at 10 a. m. on the 17th day of January, 1949, in the hearing room of the Commission, Hurley-Wright Building, 1800 Pennsylvania Avenue, N. W., Washington, D. C.

(B) The Licensee's application for rehearing as to all matters other than those on which a rehearing is granted in paragraph (A) above be and the same is hereby denied.

(C) Paragraphs (A), (B), (C) and (E) of the Commission's order of September 2, 1948, be and they hereby are stayed until further order of the Commission.

Date of issuance: October 29, 1948.

By the Commission.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 48-9683; Filed, Nov. 3, 1948; 8:52 a. m.]

[1] Rehearing is granted on $201,883.64 of the $204,122.85 disallowed under Item No. 6. The difference of $2,239.21, on which rehearing is denied, was conceded by Licensee's counsel to be an improper project cost, being made up almost entirely of an interest claim in addition to the allowance made under Item No. 3 for interest during construction.

[2] The project was in operation every day during the period from March 1, 1925 to July 1, 1925, and its output for those four months totaled 15,288,000 kwh, a daily average of 125,311 kwh, or an average of 43.5 per cent of the total capacity of the two generating units operating 24 hours a day. This compares with an average daily generation of 51.02 per cent for the remaining six months of 1925, and with a daily average of 39.23 per cent for the year 1926.

[Project Nos. 1636, 1720]

ARKANSAS VALLEY ELECTRIC COOPERATIVE CORP. AND BLACK RIVER ELECTRIC COOPERATIVE

NOTICE OF DETERMINATIONS OF AMOUNTS OF ANNUAL CHARGES

OCTOBER 28, 1948.

Notice is hereby given that, on October 28, 1948, the Federal Power Commission issued its determinations entered October 26, 1948, relative to the amounts of annual charges due for the year 1948 in the above-designated matters.

[SEAL] LEON M. FUQUAY, *Secretary.*

[F. R. Doc. 48-9658; Filed, Nov. 3, 1948; 8:46 a. m.]

INTERSTATE COMMERCE COMMISSION

[S. O. 836]

UNLOADING OF COAL AT CLARKSBURG, W. VA.

At a session of the Interstate Commerce Commission, Division 3, held at its office in Washington, D. C., on the 29th day of October A. D. 1948.

It appearing, that 4 cars of bituminous coal at Clarksburg, W. Va., are on hand on the Baltimore and Ohio Railroad Company, for an unreasonable length of time and that this delay in unloading such cars impedes their use; in the opinion of the Commission an emergency exists requiring immediate action: It is ordered, that:

(a) *Bituminous coal at Clarksburg, W. Va., be unloaded.* The Baltimore and Ohio Railroad Company, its agents or employees, shall unload immediately B & O 225016, B & O 420071, B & O 726323 and B & O 321561, loaded with coal now on hand at Clarksburg, W. Va., by the Flemington Coal Company.

(b) *Demurrage.* No common carrier by railroad subject to the Interstate Commerce Act shall charge or demand or collect or receive any demurrage or storage charges for the detention under load of any car specified in paragraph (a) of this order, for the detention period commencing at 7:00 a. m., November 1, 1948, and continuing until the actual unloading of said car or cars is completed.

(c) *Provisions suspended.* The operation of any or all rules, regulations, or practices, insofar as they conflict with the provisions of this order, is hereby suspended.

(d) *Notice and expiration.* Said carrier shall notify the Director, Bureau of Service, Interstate Commerce Commission, Washington, D. C., when it has completed the unloading required by paragraph (a) hereof, and such notice shall specify when, where, and by whom such unloading was performed. Upon receipt of that notice this order shall expire.

It is further ordered, that this order shall become effective immediately; that a copy of this order and direction be served upon the Association of American Railroads, Car Service Division, as agent of the railroads subscribing to the car service and per diem agreement under the terms of that agreement; and that notice of this order be given to the general public by depositing a copy in the office of the Secretary of the Commission, at Washington, D. C., and by filing it with the Director, Division of the Federal Register.

(40 Stat. 101, sec. 402; 41 Stat. 476, sec. 4; 54 Stat. 901, 911; 49 U. S. C. 1 (10)-(17), 15 (2))

By the Commission, Division 3.

[SEAL] W. P. BARTEL, *Secretary.*

[F. R. Doc. 48-9676; Filed, Nov. 3, 1948; 8:49 a. m.]

SECURITIES AND EXCHANGE COMMISSION

[File No. 1-1241]

ENGINEERS PUBLIC SERVICE CO.

ORDER GRANTING APPLICATION TO STRIKE FROM LISTING AND REGISTRATION

At a regular session of the Securities and Exchange Commission, held at its office in the city of Washington, D. C., on the 29th day of October A. D. 1948.

The New York Stock Exchange, pursuant to section 12 (d) of the Securities Exchange Act of 1934 and Rule X-12D2-1 (b) promulgated thereunder, has made application to strike from listing and registration the Common Stock, $1.00 Par Value, of Engineers Public Service Company.

The reasons for striking this security from registration and listing on this exchange that are stated in the application are: (1) Engineers Public Service Company (hereinafter called the issuer) was dissolved on June 30, 1947; (2) distribution of the assets of the issuer to its preferred and common stockholders was made on July 21, 1947, with the exception of $350,000 in cash, 162,612 shares of common stock of Virginia Electric and Power Company, and a claim upon $4,000,000 deposited in escrow for preferred shareholders' claims now in the process of litigation; (3) the security which is the subject of this application was suspended from trading on the applicant exchange as of July 22, 1947; (4) the issuer terminated the appointment of the transfer agent and registrar for this security in the City of New York.

Appropriate notice and opportunity for hearing have been given to interested persons and the public generally. No request has been received from any interested person for a hearing in this matter. The rules of the New York Stock Exchange with respect to striking a security from registration and listing have been complied with.

The Commission having considered the facts stated in the application, and having due regard for the public interest and the protection of investors;

It is ordered, That the application of the New York Stock Exchange to strike the Common Stock, $1.00 Par Value, of Engineers Public Service Company from registration and listing be, and the same is, hereby granted, effective at the close of the trading session on November 10, 1948.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F. R. Doc. 48-9662; Filed, Nov. 3, 1948; 8:47 a. m.]

[File No. 1-1409]

ALASKA PACKERS ASSN.

ORDER GRANTING APPLICATION TO WITHDRAW FROM LISTING AND REGISTRATION

At a regular session of the Securities and Exchange Commission, held at its office in the city of Washington, D. C., on the 29th day of October A. D. 1948.

Alaska Packers Association, pursuant to section 12 (d) of the Securities Exchange Act of 1934 and Rule X-12D2-1 (b) promulgated thereunder, has made application to withdraw its $100 Par Value Common Stock from listing and registration on the San Francisco Stock Exchange.

The reasons for withdrawing this security from registration and listing on this exchange that are stated in the application are: (1) Of the 57,508 outstanding shares of applicant's common stock, 48,763 are owned by California Packing Corporation, 149 shares are owned by executives of applicant, and there are a very small number of shares outstanding in the hands of the public; (2) there is very little trading in shares of applicant's stock, as the only transactions in this security on the San Francisco Stock Exchange from October 1947 to March 1948 were purchases by applicant of shares now held in its treasury, all such purchases aggregating 330 shares during such period; (3) the expenses of maintaining registration and listing of this security on the San Francisco Stock Exchange are disproportionate, in view of the small number of shares traded on the Exchange, to the advantages accruing to applicant and its stockholders from listing and registration of this security.

Appropriate notice and opportunity for hearing have been given to interested persons and the public generally. No request has been received from any interested person for a hearing in this matter. The rules of the San Francisco Stock Exchange with respect to withdrawal of a security from registration and listing have been complied with.

The Commission having considered the facts stated in the application, and having due regard for the public interest and the protection of investors;

It is ordered, That said application be, and the same is, hereby granted, effective at the close of the trading session on December 15, 1948.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F. R. Doc. 48-9663; Filed, Nov. 3, 1948; 8:47 a. m.]

[File No. 7-1045]

IRON FIREMAN MFG. CO.

ORDER DETERMINING VALUE OF STOCK

At a regular session of the Securities and Exchange Commission, held at its office in the city of Washington, D. C., on the 29th day of October A. D. 1948.

The New York Curb Exchange has made application under Rule X-12F-2 (b) for a determination that the Voting Trust Certificates for Common Capital Stock, Without Par Value, of Iron Fireman Manufacturing Company issued under Voting Trust Agreement dated November 15, 1928, as extended until December 1, 1958, are substantially equivalent to the Voting Trust Certificates for Common Capital Stock, Without Par Value, of Iron Fireman Manufacturing Company issued under Voting Trust Agreement dated November 15, 1928, expiring December 1, 1948. The latter Voting Trust Certificates have heretofore been admitted to unlisted trading privileges on the applicant exchange.

The Commission having duly considered the matter, and having due regard for the public interest and the protection of investors;

It is ordered, Pursuant to sections 12 (f) and 23 (a) of the Securities Exchange Act of 1934 and Rule X-12F-2(b) thereunder, that the Voting Trust Certificates for Common Capital Stock, Without Par Value, of Iron Fireman Manufacturing Company issued under Voting Trust Agreement dated November 15, 1928, as extended to December 1, 1958, are substantially equivalent to the Voting Trust Certificates for Common Capital Stock, Without Par Value, of Iron Fireman Manufacturing Company, issued under Voting Trust Agreement dated November 15, 1928 (as amended) expiring December 1, 1948, which latter Voting Trust Certificates have heretofore been admitted to unlisted trading privileges on the applicant exchange.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F. R. Doc. 48-9660; Filed, Nov. 3, 1948; 8:47 a. m.]

[File No. 7-1076]

PUBLIC SERVICE ELECTRIC AND GAS CO.

ORDER DETERMINING VALUE OF STOCK

At a regular session of the Securities and Exchange Commission, held at its office in the city of Washington, D. C., on the 29th day of October A. D. 1948.

The Boston Stock Exchange has made application under Rule X-12F-2(b) for a determination that the Common Stock, No Par Value, of Public Service Electric and Gas Company is substantially equivalent to the Common Stock, No Par Value, of Public Service Corporation of New Jersey, heretofore admitted to unlisted trading privileges on the applicant exchange.

The Commission having duly considered the matter, and having due regard for the public interest and the protection of investors;

It is ordered, Pursuant to sections 12 (f) and 23 (a) of the Securities Exchange Act of 1934 and Rule X-12F-2 (b) thereunder, that the Common Stock, No Par Value, of Public Service Electric and Gas Company is hereby determined to be substantially equivalent to the Common Stock, No Par Value, of Public Service Corporation of New Jersey, heretofore admitted to unlisted trading privileges on the applicant exchange.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F. R. Doc. 48-9661; Filed, Nov. 3, 1948; 8:47 a. m.]

[File No. 70-1840]

NEW JERSEY POWER & LIGHT CO.

ORDER RELEASING JURISDICTION OVER LEGAL FEES AND EXPENSES

At a regular session of the Securities and Exchange Commission, held at its office in the city of Washington, D. C., on the 28th day of October 1948.

The Commission having by orders dated June 28, 1948 and July 8, 1948, granted an application of New Jersey Power & Light Company ("New Jersey"), a public utility subsidiary of General Public Utilities Corporation, a registered holding company, relating principally to the issuance and sale by New Jersey, pursuant to the competitive bidding requirements of Rule U-50, of $6,000,000 principal amount of First Mortgage Bonds due 1978; and

The Commission in said orders having reserved jurisdiction over all legal fees and expenses to be paid by New Jersey in connection with the proposed transactions; and

The record having been supplemented with statements setting forth the amounts, nature and extent of the legal services rendered by Autenrieth & Wortendyke and Harold J. Ryan as attorneys for New Jersey, for which requests for payment in the amounts of $7,500 and $5,000 have been made, respectively; and

The Commission having considered the record and it appearing to the Commission that the above legal fees are not unreasonable and that jurisdiction over such fees should be released;

It is ordered, That the jurisdiction heretofore reserved over the payment of legal fees and expenses to be paid by New Jersey in connection with the proposed transactions be, and the same hereby is, released.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F. R. Doc. 48-9659; Filed, Nov. 3, 1948; 8:46 a. m.]

[File No. 70-1967]

MICHIGAN-WISCONSIN PIPE LINE CO.

ORDER GRANTING APPLICATION

At a regular session of the Securities and Exchange Commission, held at its office in the city of Washington, D. C., on the 27th day of October A. D. 1948.

Michigan-Wisconsin Pipe Line Company ("Michigan-Wisconsin"), a subsidiary of American Light & Traction Company ("American Light"), a registered holding company, having filed an application pursuant to section 6 (b) of the Public Utility Holding Company Act of 1935 ("act") for an exemption from the provisions of sections 6 (a) and 7 of said act, with respect to the issue and sale by Michigan-Wisconsin of $66,000,000 principal amount of 3⅝% First Mortgage Pipe Line Bonds due 1968 to Metropolitan Life Insurance Company and the Mutual Life Insurance Company of New York, to be issued under and secured by a Mortgage and Deed of Trust, and the application of the proceeds to finance in part the construction of an interstate natural gas transmission line in accordance with the provisions of a section 11 (e) plan heretofore approved by order of the Commission entered December 30, 1947; and said application having also requested an exemption from the competitive bidding requirements of Rule U-50 promulgated under said act; and

Motions having been filed by Otis & Co., an investment banking firm, moving summary dismissal of the application for exemption from the requirements of Rule U-50 and, in the alternative, moving that Michigan-Wisconsin be required to file a Registration Statement with respect to the issue and sale of the proposed bonds and to offer said bonds for sale pursuant to the competitive bidding requirements of Rule U-50; and certain common stockholders of American Light having filed a Motion to incorporate by reference into the record of these proceedings certain designated portions of the record of the proceedings on the heretofore mentioned plan of American Light and United Light and Railways Company; and

Otis & Co., having requested, in the event an order is entered approving the application, that the effectiveness of said order be delayed for a period of 48 hours to permit Otis & Co., to seek a stay of said order; and

Public hearings having been held after appropriate notice, in which all interested persons were given opportunity to be heard, and an oral argument having been heard and the Commission having considered the record and having made and filed its findings and opinion herein granting the application and denying the motions of Otis & Co., and of certain common stockholders of American Light and the Commission further deeming it appropriate to grant the request of Otis & Co., for a delay in the effectiveness of our order:

It is ordered, That said application be, and the same hereby is, granted subject, however, to the terms and conditions in Rule U-24 and to a reservation of jurisdiction with respect to fees and expenses in connection with said application.

It is further ordered, That the motions of Otis & Co., and certain stockholders of American Light be, and the same hereby are, denied.

It is further ordered, That the effectiveness of this order be delayed for a period of two business days from the

date hereof and that such order shall be effective October 29, 1948 at 5:30 p. m., e. s. t.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F. R. Doc. 48-9664; Filed, Nov. 8, 1948; 8:47 a. m.]

[File No. 70-1977]

AMERICAN GAS AND ELECTRIC CO. AND AMERICAN GAS AND ELECTRIC SERVICE CORP.

NOTICE OF FILING

At a regular session of the Securities and Exchange Commission, held at its office in the city of Washington, D. C., on the 29th day of October A. D. 1948.

Notice is hereby given that American Gas and Electric Company ("American Gas"), a registered holding company, and American Gas and Electric Service Corporation ("Service Corporation"), a wholly owned service company subsidiary of American Gas, have filed a joint application-declaration pursuant to the Public Utility Holding Company Act of 1935, and have designated sections 7 and 10 as applicable to the transactions proposed therein which may be summarized as follows:

For the stated purpose of supplying Service Corporation with adequate capital for its operations it is proposed to finance Service Corporation by increasing its authorized capital stock from 1,000 shares of the par value of $100 per share, of which 100 shares are issued and outstanding and owned by American Gas, to 10,000 shares of the par value of $100 per share and by issuing 7,750 shares of said stock to American Gas against payment therefor of $200,000 in cash and the surrender and cancellation of $575,000 principal amount of open account indebtedness owed by Service Corporation to American Gas for cash in that amount heretofore advanced by American Gas to Service Corporation without interest.

The applicants-declarants request that the Commission issue an order at the earliest practicable date granting the application and permitting the declaration to become effective and that such order become effective upon issuance.

Notice is further given that any interested person may not later than November 12, 1948 at 11:30 a. m., e. s. t., request the Commission in writing that a hearing be held on such matter stating the nature of his interest, the reasons for such request and the issues, if any, of fact or law raised by said application-declaration which he desires to controvert, or may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, 425 Second Street NW., Washington 25, D. C. At any time after 11:30 a. m., e. s. t., November 12, 1948 said application-declaration as filed, or as amended, may be granted and permitted to become effective as provided in Rule U-23 of the rules and regulations promulgated under said act, or the Commission may exempt such transactions as provided in Rule U-20 (a) and Rule U-100 thereof. All interested persons are referred to said application-declaration which is on file with this Commission for a statement of the transactions therein proposed.

By the Commission.

[SEAL] NELLYE A. THORSEN, *Assistant Secretary.*

[F. R. Doc. 48-9665; Filed, Nov. 8, 1948; 8:48 a. m.]

[File No. 70-1988]

FRED D. ELLIS AND EDMUND J. HAUGH

NOTICE OF FILING

At a regular session of the Securities and Exchange Commission, held at its office in the city of Washington, D. C., on the 29th day of October A. D. 1948.

Notice is hereby given that Fred D. Ellis and Edmund J. Haugh, ("Applicants"), have filed an application pursuant to the Public Utility Holding Company Act of 1935. Sections 9 (a) (2) and 10 of the act are designated as applicable to the proposed transaction.

Notice is further given that any interested person may, not later than November 8, 1948, at 5:30 p. m., e. s. t., request in writing that a hearing be held with respect to said application, stating the nature of his interest, the reasons for such request and the issues of fact or law raised by the application which he desires to controvert, or may request in writing that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, 425 Second Street NW., Washington 25, D. C. At any time after said date, the application, as filed or as amended, may be granted as provided in Rule U-23 of the rules and regulations promulgated under the act, or the Commission may exempt such transactions as provided in Rule U-20 (a) and Rule U-100 thereof.

All interested persons are referred to said application which is on file in the office of the Commission for a statement of the proposed transaction which may be summarized as follows:

Applicants own all of the outstanding capital stock and $122,500 principal amount of open account indebtedness of Northwestern Illinois Gas & Electric Company ("Northwestern"), an exempt holding company which owns all of the outstanding capital stock and $50,000 principal amount of 4% note indebtedness of Illinois Gas & Electric Company ("Illinois"). Both companies are public utility companies organized in and operating within the State of Illinois. The capital stock of Illinois consists of 2,500 shares of common stock of no par value with an aggregate book value of $75,000, which amount also represents the carrying value of such stock on the books of Northwestern. The $50,000 note of Illinois is carried at par on Northwestern's books.

Applicants propose to acquire from Northwestern all of its interest in Illinois, surrendering in exchange therefor $100,000 principal amount of open account indebtedness owed by Northwestern to Applicants, and all of Northwestern's outstanding 5% cumulative preferred stock, consisting of 1,000 shares with an aggregate par value of $100,000. The application recites that Northwestern plans to credit its capital stock account in the amount of $75,000, representing the amount by which the principal and par amount of Northwestern preferred stock and indebtedness being surrendered by Applicants (aggregating $200,000) exceeds the carrying value on the books of Northwestern of the securities of Illinois being conveyed (aggregating $125,000).

Applicants request the Commission's order to be issued as soon as practicable and become effective immediately upon issuance thereof.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F. R. Doc. 48-9666; Filed, Nov. 3, 1948; 8:48 a. m.]

UNITED STATES TARIFF COMMISSION

[Investigation 117]

ALMONDS

ORDER FOR EXTENSION OF INVESTIGATION AND PUBLIC HEARING

Investigation extended. The United States Tariff Commission on this first day of November 1948 under and by virtue of the power granted by law and pursuant to the Commission's rules of practice and procedure hereby gives notice that the investigation instituted on September 16, 1948, for the purposes of section 336 of the Tariff Act of 1930, of the differences in costs of production, and of all other facts and conditions enumerated in said section with respect to:

Almonds, shelled, and almonds, blanched, roasted, or otherwise prepared or preserved

described in paragraph 756 of Title I of said Act, be, and is hereby extended to include also almonds not shelled. As extended, the investigation now applies to the following articles provided for in paragraph 756 of the tariff act:

Almonds, not shelled; almonds, shelled; and almonds, blanched, roasted, or otherwise prepared or preserved.

Hearing date set. All parties interested will be given opportunity to be present, to produce evidence, and to be heard at a public hearing to be held at the office of the Commission in Washington, D. C., at 10 o'clock a. m. on the third day of December 1948.

I certify that this extension of the investigation and the public hearing were ordered by the United States Tariff Commission on the 29th day of October 1948.

SIDNEY MORGAN, *Secretary.*

[F. R. Doc. 48-9671; Filed, Nov. 3, 1948; 8:48 a. m.]